

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MELVIN CHAD MAHORNEY,

Petitioner,

vs.

TED WALLMAN, Warden,

Respondent.

No. 86-C-642-E

DEC 30 1988


Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

The Court has for consideration the Report and Recommendation of the Magistrate filed ~~October~~ 11, 1986. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is adopted by the Court.

IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate filed ~~October~~ ^{DECEMBER} 11, 1986 is adopted by the Court.

ORDERED this 23rd day of December, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

DEC 3 1988

John D. ...
...

DONALD RAY CONNER; MARSHA GAYLE
CONNER; COUNTY TREASURER,
Rogers County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Rogers County, Oklahoma,

CIVIL ACTION NO. 88-C-1462-B

This matter comes on for consideration this 30th day of December, 1988. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants, County Treasurer, Rogers County, Oklahoma; and Board of County Commissioners, Rogers County, Oklahoma, appear by Ernest E. Haynes, Jr., Assistant District Attorney, Rogers County, Oklahoma; and the Defendants, Donald Ray Conner and Marsha Gayle Conner, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Donald Ray Conner, acknowledged receipt of Summons and Complaint on November 6, 1988; that the Defendant, Marsha Gayle Conner, acknowledged receipt of Summons and Complaint on November 5, 1988; that Defendant, County Treasurer, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on October 26,

1988; and that Defendant, Board of County Commissioners, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on October 25, 1988.

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer and Cross-Petition herein on November 1, 1988; and that the Defendants, Donald Ray Conner and Marsha Gayle Conner, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4), Block Two (2), of NORTHAVEN, a Subdivision in Section 31, Township 22 North, Range 16 East, Rogers County, Oklahoma, according to a recorded plat thereof; a/k/a 2917 North Park, Claremore, Oklahoma.

The Court further finds that on November 24, 1982, the Defendants, Donald Ray Conner and Marsha Gayle Conner, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$56,000.00, payable in monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Donald Ray Conner and Marsha Gayle Conner, executed and delivered to the United States of America, acting on behalf of the Administrator

of Veterans Affairs, a mortgage dated November 24, 1982, covering the above-described property. Said mortgage was recorded on November 29, 1982, in Book 635, Page 277, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, Donald Ray Conner and Marsha Gayle Conner, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Donald Ray Conner and Marsha Gayle Conner, are indebted to the Plaintiff in the principal sum of \$55,560.44, plus interest at the rate of 12 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$23.90 which became a lien on the property as of 1988. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Donald Ray Conner and Marsha Gayle Conner, in the principal sum of \$55,560.44, plus interest at the rate of 12 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.70 percent per annum until paid, plus

the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, have and recover judgment in the amount of \$23.90 for personal property taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Donald Ray Conner and Marsha Gayle Conner, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendants, County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, in the amount of \$23.90, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney

ERNEST E. HAYNES, JR., OBA #4007
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Rogers County, Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 3 1988

JUL 6 1989

DEBBIE L. BOWLINE and OSCAR F. BOWLINE)
)
Plaintiffs,)
)
v.)
)
SAFEWAY STORES, INC.,)
)
Defendant.)

Case No. 88-C-419-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 30th day of December, 1988, it appearing to the Court
that this matter has been compromised and settled, this case is herewith dismissed
with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AUDIE F. MARTIN,

Defendant.

CIVIL ACTION NO. 88-C-958-B

DEFAULT JUDGMENT

This matter comes on for consideration this 30th day of December, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Audie F. Martin, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Audie F. Martin, was served with Summons and Complaint on November 15, 1988. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Audie F. Martin, for the principal sum of \$8,737.67, plus accrued interest of \$1,026.05 as of June 30, 1988, plus interest thereafter at the rate of four (4) percent per annum until judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 30 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

LEE TRAYLOR

Plaintiff,

v.

RITA ANDREWS, et al

Defendant.

88-C-260-B

ORDER

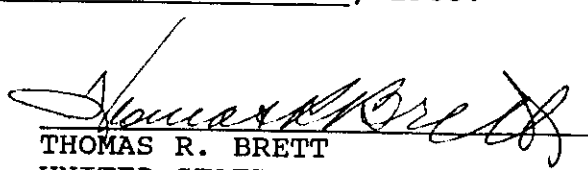
The Court has for consideration the Report and Recommendation of the Magistrate filed December 13, 1988 in which the Magistrate recommended that Plaintiff's Motion to Vacate Judgment be denied.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that Plaintiff's Motion to Vacate Judgment is denied.

Dated this 30th day of December, 1988.


THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DARRYL K. PEARSON,

Plaintiff,

vs.

NIAGARA MACHINE & TOOL WORKS,
a Foreign Corporation, et al.,

Defendants,

OWENS-ILLINOIS INCORPORATED
GLASS CONTAINER DIVISION,
a Foreign Corporation,

Third Party Plaintiff,

vs.

CONTINENTAL CAN COMPANY, INC.,
a Foreign Corporation, and
PETER KIEWIT SONS', INC.,
a Foreign Corporation,

Third Party Defendants.)

No. 88-C-71-B

FILED

APR 2 1988

ORDER OF DISMISSAL

NOW on this 30th day of Dec., 1988, upon the written application of the Defendant, E. Porter Essley Corporation, for a Dismissal Without Prejudice of its Cross Claim against the Defendants, Niagara Machine & Tool Works, and Owens-Illinois Incorporated Glass Container Division, in the case of Pearson v. Niagara, et al., and all causes of action therein, the court having examined said Application finds that said Defendant and Plaintiff have entered into a compromise settlement agreement believed to resolve all claims involved in the

Cross Claim and have requested the court to dismiss said Cross Claim without prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the parties, and that said Cross Claim against Niagara Machine & Tool Works and Owens-Illinois Incorporated Glass Container Division, should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that all causes of action in the Cross Claim of the Defendant, E. Porter Essley Corporation, against Niagara Machine & Tool Works and Owens-Illinois Incorporated Glass Container Division, be and the same hereby are dismissed without prejudice to any future action.

S/ THOMAS R. BRETT

JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

DEC 30 1983

JACK L. HARRIS, CLERK
U.S. DISTRICT COURT

SHERIL MITCHELL,)
)
Plaintiff,)
)
vs.) No. 87-C-784-B
)
ZAPATA INDUSTRIES,)
A Pennsylvania Corp.,)
DIAMOND NATIONAL)
CORPORATION, The Gardner)
Division, A Ohio Corp.,)
FAMCO, INC., a Kentucky)
Corp., and ACCUMETRIC,)
INC., a Kentucky Corp.)
)
Defendants.)

DISMISSAL WITHOUT PREJUDICE

COMES NOW, the Plaintiff, Sheril Mitchell, by and through her attorneys of record, Morris and Morris, by Greg A. Morris, and hereby dismisses Defendant Accumetric, Inc., without prejudice from the above styled and numbered cause of action.

Respectfully submitted,

MORRIS and MORRIS

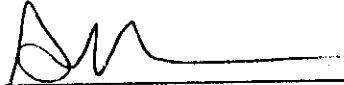
By:



Greg A. Morris
Oklahoma Bar Number 10540
201 West Fifth
Suite 520
Tulsa, Oklahoma 74103
918-587-5514

CERTIFICATE OF MAILING

I, Greg A. Morris, hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal Without Prejudice, with postage prepaid, to Pat Malloy, Sr., Attorney at Law, 1924 S. Utica, Suite 810, Tulsa, OK 74104; and D. Michael Coyle, Attorney at Law, P.O. Box 843, Elizabethtown, KY. 42701, on this _____ day of December, 1988.



Greg A. Morris

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 29 1993

MOHAMMED SAYANI, SEEMA SAYANI, individually)
and as the natural parents and next
friend of FAHAD SAYANI, a minor,

Plaintiffs,

v.

VICKIE LYNN CROWLEY,

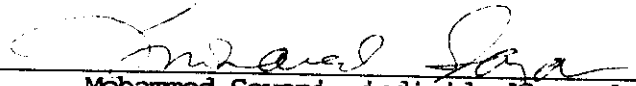
Defendant.

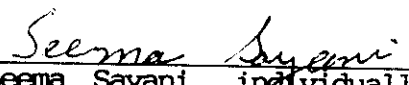
No. 88-C-265-E


JACK D. STEVENS, CLERK
U.S. DISTRICT COURT

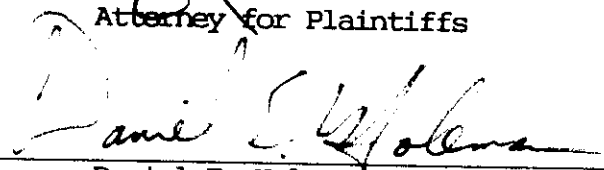
STIPULATION FOR ~~FORGIVENESS~~ OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, their attorney of record, and Defendant's counsel, and would show the Court that this matter has been compromised and settled and, therefore, moves the Court for an Order Of Dismissal With Prejudice.


Mohammed Sayani, individually and as
parent and next friend of Fahad
Sayani


Seema Sayani, individually and as
parent and next friend of Fahad
Sayani


Randall A. Gill
Attorney for Plaintiffs


Daniel E. Holman
Attorney for Defendant

GLH/LAL/ta
06/10/87

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

1987

BOBBY LEE BAUER, et al.,

Plaintiffs,

vs.

ARMSTRONG WORLD INDUSTRIES, INC., et al.,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

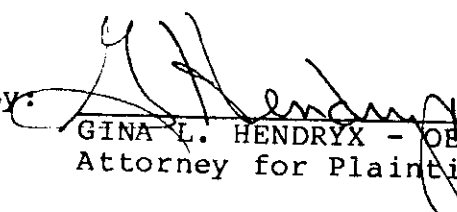
No. 87-C-66-E

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, IRA ROY DENMAN and DONNA MAXINE DENMAN, and hereby dismiss with prejudice the Defendant RAYMARK INDUSTRIES, INC., a corporation, formerly known as Raybestos, Manhattan, Inc., a corporation, from the above-styled cause of action.

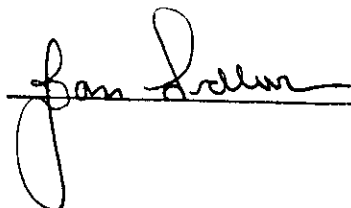
JOHN W. NORMAN INCORPORATED
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

By:


GINA L. HENDRYX - OBA #10330
Attorney for Plaintiffs

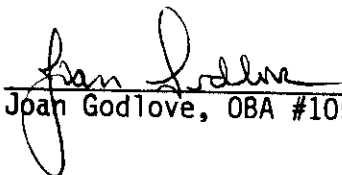
RAYMARK INDUSTRIES, INC.

By:



CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Dismissal with Prejudice has, this 28th day of December, 1988, been deposited in the United States mail, first class postage prepaid, addressed to all counsel of record.


Joan Godlove, OBA #10563

JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE, A Professional Corporation
3800 First National Tower
Tulsa, Oklahoma 74103
Telephone: (918) 581-8200

ATTORNEYS FOR RAYMARK INDUSTRIES, INC.

GLH/LAL/ta
06/10/87

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BOBBY LEE BAUER, et al.,

Plaintiffs,

vs.

ARMSTRONG WORLD INDUSTRIES, INC., et al.,

Defendants.

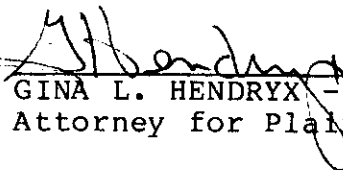
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 87-C-66-E

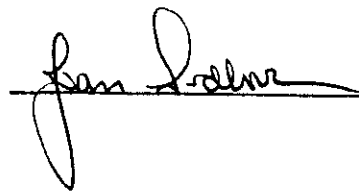
DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, FRED FAULKNER and MARGARET N. FAULKNER, and hereby dismiss with prejudice the Defendant RAYMARK INDUSTRIES, INC., a corporation, formerly known as Raybestos, Manhattan, Inc., a corporation, from the above-styled cause of action.

JOHN W. NORMAN INCORPORATED
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

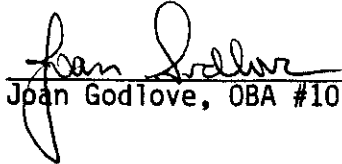
By: 
GINA L. HENDRYX - OBA #10330
Attorney for Plaintiffs

RAYMARK INDUSTRIES, INC.

By: 

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Dismissal with Prejudice has, this 28th day of December, 1988, been deposited in the United States mail, first class postage prepaid, addressed to all counsel of record.


Joan Godlove, OBA #10563

JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE, A Professional Corporation
3800 First National Tower
Tulsa, Oklahoma 74103
Telephone: (918) 581-8200

ATTORNEYS FOR RAYMARK INDUSTRIES, INC.

GLH/LAL/ta
06/10/87

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BOBBY LEE BAUER, et al.,

Plaintiffs,

vs.

ARMSTRONG WORLD INDUSTRIES, INC., et al.,

Defendants.

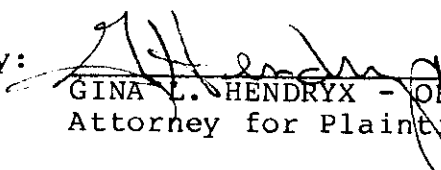
No. 87-C-66-E

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, JERRY CAVIN, and hereby
dismisses with prejudice the Defendant RAYMARK INDUSTRIES, INC.,
a corporation, formerly known as Raybestos, Manhattan, Inc., a
corporation, from the above-styled cause of action.

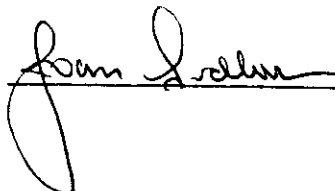
JOHN W. NORMAN INCORPORATED
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

By:


GINA L. HENDRYX - OBA #10330
Attorney for Plaintiff

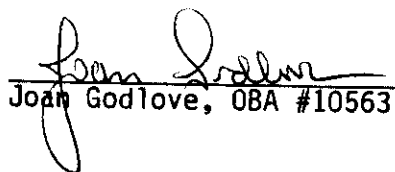
RAYMARK INDUSTRIES, INC.

By:



CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Dismissal with Prejudice has, this 28th day of December, 1988, been deposited in the United States mail, first class postage prepaid, addressed to all counsel of record.


Joan Godlove, OBA #10563

JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE, A Professional Corporation
3800 First National Tower
Tulsa, Oklahoma 74103
Telephone: (918) 581-8200

ATTORNEYS FOR RAYMARK INDUSTRIES, INC.

GLH/LAL/ta
06/10/87

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

U.S. District Court
Clerk

BOBBY LEE BAUER, et al.,

Plaintiffs,

vs.

ARMSTRONG WORLD INDUSTRIES, INC., et al.,

Defendants.

No. 87-C-66-E

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, BOBBY LEE BAUER and HELEN L. BAUER, and hereby dismiss with prejudice the Defendant RAYMARK INDUSTRIES, INC., a corporation, formerly known as Raybestos, Manhattan, Inc., a corporation, from the above-styled cause of action.

JOHN W. NORMAN INCORPORATED
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

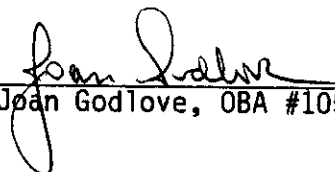
By: Gina L. Hendryx
GINA L. HENDRYX OBA #10330
Attorney for Plaintiffs

RAYMARK INDUSTRIES, INC.

By: Jan Lollar

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Dismissal with Prejudice has, this 28th day of December, 1988, been deposited in the United States mail, first class postage prepaid, addressed to all counsel of record.


Joan Godlove, OBA #10563

JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE, A Professional Corporation
3800 First National Tower
Tulsa, Oklahoma 74103
Telephone: (918) 581-8200

ATTORNEYS FOR RAYMARK INDUSTRIES, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 28 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

DYCO PETROLEUM CORPORATION,

Plaintiff,

v.

MOBIL OIL CORPORATION,

Defendant.

Case No. 86-C-883-B

ORDER OF DISMISSALS WITH PREJUDICE

This matter comes before the Court on the Stipulation of Dismissals With Prejudice of the parties in the above referenced action. The Court finds that Plaintiff's claim and Defendant's counterclaim should both be dismissed with prejudice to the refiling thereof.


UNITED STATES DISTRICT JUDGE

762JCC88

GLH/LAL/ta
06/10/87

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE ^{FILED 1988}
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT *CS*

BOBBY LEE BAUER, et al.,

Plaintiffs,

vs.

ARMSTRONG WORLD INDUSTRIES, INC., et al.,

Defendants.

No. 87-C-66-E ✓

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, JIMMY HUGH HAYNES and ROSALIE HAYNES, and hereby dismiss with prejudice the Defendant RAYMARK INDUSTRIES, INC., a corporation, formerly known as Raybestos, Manhattan, Inc., a corporation, from the above-styled cause of action.

JOHN W. NORMAN INCORPORATED
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

By: *Gina L. Hendryx*
GINA L. HENDRYX OBA #10330
Attorney for Plaintiffs

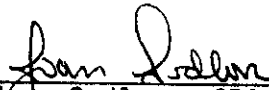
RAYMARK INDUSTRIES, INC.

By: *Jan Silver*

179

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Dismissal with Prejudice has, this 28th day of December, 1988, been deposited in the United States mail, first class postage prepaid, addressed to all counsel of record.


Joan Godlove, OBA #10563

JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE, A Professional Corporation
3800 First National Tower
Tulsa, Oklahoma 74103
Telephone: (918) 581-8200

ATTORNEYS FOR RAYMARK INDUSTRIES, INC.

GLH/LAL/ta
06/10/87

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

1987 (88)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

BOBBY LEE BAUER, et al.,

Plaintiffs,

vs.

ARMSTRONG WORLD INDUSTRIES, INC., et al.,

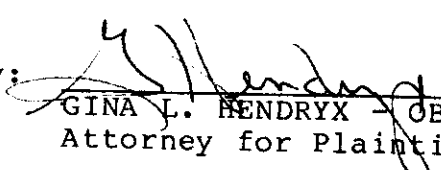
Defendants.

No. 87-C-66-E ✓

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, BOBBY GENE WILLIAMS and JACQUILINE COLLEEN WILLIAMS, and hereby dismiss with prejudice the Defendant RAYMARK INDUSTRIES, INC., a corporation, formerly known as Raybestos, Manhattan, Inc., a corporation, from the above-styled cause of action.

JOHN W. NORMAN INCORPORATED
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

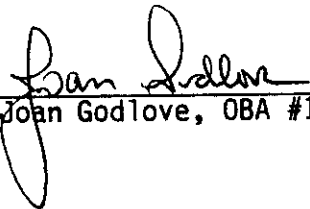
By: 
GINA L. HENDRYX - OBA #10330
Attorney for Plaintiffs

RAYMARK INDUSTRIES, INC.

By: 

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Dismissal with Prejudice has, this 28th day of December, 1988, been deposited in the United States mail, first class postage prepaid, addressed to all counsel of record.


Joan Godlove, OBA #10563

JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE, A Professional Corporation
3800 First National Tower
Tulsa, Oklahoma 74103
Telephone: (918) 581-8200

ATTORNEYS FOR RAYMARK INDUSTRIES, INC.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 27 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIGNA PROPERTY & CASUALTY
COMPANIES, a Pennsylvania
corporation,

Plaintiff,)

vs.)

Case No. 88-C-224-B

YOCHAM BROTHERS CONSTRUCTION,
INC., an Oklahoma corporation,

Defendant/)

Third-Party Plaintiff,)

vs.)

AMERICAN CASUALTY COMPANY OF
READING, PENNSYLVANIA,

Third-Party Defendant.)

**ORDER GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT; DENYING THIRD-PARTY DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT; AND
SUPPLEMENTAL SCHEDULING ORDER**

On the 18th day of November, 1988, this matter came on for hearing before the Court upon the Motions for Summary Judgment filed by Plaintiff, CIGNA Property & Casualty Companies ("CIGNA"), and Third-Party Defendant, American Casualty Company of Reading, Pennsylvania ("American Casualty"), and Plaintiff's Application for Extension of Time to File Agreed Pre-Trial Order and Pre-trial Pleadings. CIGNA appeared by and through its counsel, Anthony P. Sutton of Feldman, Hall, Franden, Woodard & Farris; the Defendant/Third-Party Plaintiff, Yocham Brothers Construction, Inc. ("Yocham") appeared by and through its counsel, Tom Filbeck; and American Casualty appeared by and through its counsel, Eugene Robinson of McGivern, Scott, Gilliard, McGivern & Robinson. Upon reviewing the parties'

36

respective motions, objections and supporting briefs and exhibits; after entertaining argument of counsel; and after reviewing the pleadings and the record; the Court finds:

1. Based upon the lack of rebutting proof to CIGNA's Motion for Summary Judgment and based upon the evidence presented in CIGNA's Motion for Summary Judgment, the Court finds that CIGNA's Motion for Summary Judgment should be sustained and judgment entered accordingly for CIGNA and against Yocham in the principal sum of \$25,301.84 plus attorney's fees and costs in the sum of \$4,784.57.

2. With regard to American Casualty's Motion for Summary Judgment, the Court finds that said Motion should be denied in that issues of fact remain to be determined by this Court regarding the representations made by Tommy Hearn to Yocham; the relationship between Hearn and American Casualty; Yocham's reliance upon Hearn's representations regarding the effective date of the Workers' Compensation insurance policy; and other pertinent factual issues and the application of Tennessee law to those factual issues.

3. The parties will try the issues presented by Yocham's Third-Party Complaint before this Court, non-jury, on January 30, 1989 at 9:00 A.M. In preparation for said trial, the parties are to submit an Agreed Pre-Trial Order which shall contain a stipulated record of facts to the extent possible with the parties retaining the right to present evidence at the trial to the extent certain facts cannot be stipulated by the parties. Proposed findings of fact and conclusions of law and trial briefs

must be filed on or before January 23, 1989.

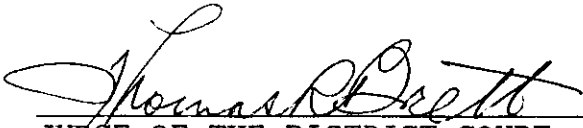
IT IS THEREFORE ORDERED that CIGNA's Motion for Summary Judgment is hereby sustained and judgment shall be entered for CIGNA and against Yocham in the principal sum of \$25,301.84 plus attorney's fees and costs of \$4,784.57 for a total judgment of \$30,086.41 plus pre and post-judgment interest at the highest rate allowed by law.

IT IS FURTHER ORDERED that American Casualty's Motion for Summary Judgment shall be and is hereby denied.

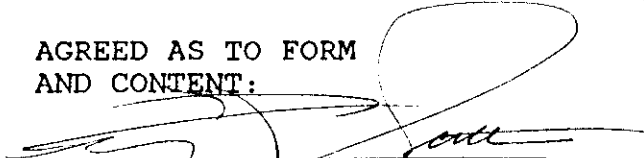
IT IS FURTHER ORDERED that non-jury trial is hereby set for January 30, 1989 at 9:00 A.M. The parties are further ordered to present to the Court an Agreed Pre-Trial Order, with a stipulated record of facts to the extent possible, on or before December 16, 1988.


IT IS FURTHER ORDERED that proposed findings of fact and conclusions of law and trial briefs must be filed on or before January 23, 1989.

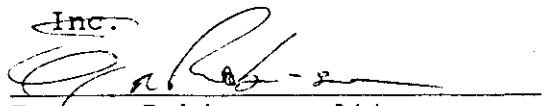
DATED this 27th day of ^{December}~~November~~, 1988.


JUDGE OF THE DISTRICT COURT

AGREED AS TO FORM
AND CONTENT:


Anthony P. Sutton, Attorney
for CIGNA Property &
Casualty Companies


Tom Filbeck, Attorney for
Yocham Brothers Construction,
Inc.


Eugene Robinson, Attorney
for American Casualty Company
of Reading, Pennsylvania

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GARRETT G. JUBY
and RACHEL JEAN JUBY,

Plaintiffs,

vs.

FIBREBOARD CORPORATION, et al.,

Defendants.

No. 88-C-302-B

ORDER OF DISMISSAL WITH PREJUDICE
OF DEFENDANT COMBUSTION ENGINEERING, INC.

Pursuant to Joint Stipulation of Dismissal With Prejudice of Defendant Combustion Engineering, Inc. filed herein, the Court finds and **ORDERS** that plaintiffs' causes be and the same are dismissed with prejudice as against Combustion Engineering, Inc. and plaintiffs reserving their rights against all other defendants.

Done and dated this 17th day of December, 1988.

ST THOMAS R. DRILL

U. S. DISTRICT JUDGE

FILED
DEC 21 1988
JACK C. SMITH, CLERK
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 27 1988

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

SUPERIOR INSTALLATION CO.,
INC.,

Plaintiff,

vs.

No. 88-C-1612-E

TMSI CONTRACTORS, INC.,
AMERICAN AIRLINES, INC., and
INSURANCE COMPANY OF NORTH
AMERICA, INC.,

Defendants.

DISMISSAL OF ACTION AGAINST

AMERICAN AIRLINES, INC.

COMES NOW the Plaintiff and hereby dismisses its cause of
action as against American Airlines, Inc., without prejudice to
the refiling of same.

Dated this 27 day of December, 1988.

GASAWAY, LEVINSON & BENNETT, P.A.

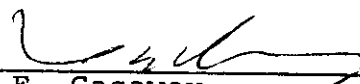
by:

Don E. Gasaway #3276
Cindy P. McVey #12970
PO Box 14070
Tulsa, Oklahoma 74159
(918) 592-5592

CERTIFICATE OF MAILING

I, Don E. Gasaway, do hereby certify that I placed a true
and correct copy of the above and foregoing instrument in the U.
S. Mail, postage prepaid, to: Thomas A. Creekmore, 3800 First

National Tower, Tulsa, OK., 74103, on this 27 day of December,
1988.



Don E. Gasaway

120688:mk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 23 1988

HALE C. LAY,

Plaintiff,

vs.

MERIDIAN RESERVE, INC.,
et al.,

Defendants.

No. 88-C-586-E

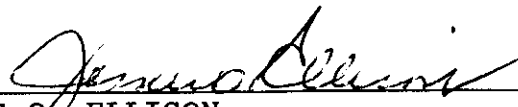
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendants having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 22nd day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SEC 23 1988 *tl*

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity, as successor in
interest to Century Bank, an
Oklahoma banking corporation,

Plaintiff,

vs.

INVIVO RESEARCH LABORATORIES,
INC., and CARL L. SHORE,

Defendants.

JACK O. SILVER, CLERK
U.S. DISTRICT COURT

No. 88-C-468-B ✓

O R D E R

This matter comes before the Court upon Plaintiff's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56 alleging there are no material facts in dispute and the Plaintiff Federal Deposit Insurance Corporation is entitled to judgment as a matter of law.

Defendant Invivo Research Laboratories, Inc. ("Invivo") was a general partner of Forest Trails South Partnership ("Partnership"), an Oklahoma general partnership for which Century Bank financed a construction loan in connection with Forest Trails South Shopping Center ("Property"). The other general partners of the Partnership were Carl Shore ("Shore"), Dan Mailath ("Mailath"), and Clyde Dunavent ("Dunavent"). Shore and Dunavent are Defendants herein; however, Dunavent has filed for protection under the Bankruptcy laws. The Partnership subsequently obtained permanent financing from a third party lender for the property; however, the amount of the permanent financing was \$115,000 less than the remaining balance of the construction loan. Roger Susi, Shore and

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Dunavent executed a promissory note for \$115,000 to bridge the shortfall in the permanent financing.¹ The Defendants executed the promissory note on March 15, 1985. The note had a six month maturity with interest payments to be made monthly. There is alleged to have been an unwritten agreement that the promissory note would be renewed on a regular basis until the property was sold. On September 16, 1985, Susi, Shore and Dunavent executed a renewal promissory note with a maturity date of March 15, 1986. Century Bank thereafter refused to execute renewal notes and made demand for payment. Upon Defendants' failure to pay, Century initiated a lawsuit in Tulsa County District Court to collect on the promissory note.

Tulsa County District Judge Robert Scott granted by minute order summary judgment for the Plaintiff Century Bank. Invivo appealed the Order to the Oklahoma Supreme Court. While the Appeal was pending, the Oklahoma Banking Commissioner declared Century Bank insolvent. The FDIC in its corporate capacity purchased the promissory note and initiated this action to collect the debt. Defendants assert three affirmative defenses against the FDIC; fraud in the inducement of the contract, failure of consideration, and estoppel. Notwithstanding these affirmative defenses, Plaintiff moved for summary judgment as a matter of law because the defenses are inapplicable to suits by the FDIC in its corporate

¹The loan documents were not prepared in the Partnership's name, but in Shore's and Dunavent's names as individuals. Roger Susi signed the documents in his capacity as President of Invivo. Dan Mailath was not a party to the promissory note.

capacity.

The cornerstone of the FDIC's status as a holder in due course is 12 U.S.C. §1823(e). This section essentially precludes Defendants from asserting fraud in the inducement of contract and waiver and estoppel where the basis for these defenses is an unwritten agreement. 12 U.S.C. §1823(e) provides:

"No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, whether as security for a loan or by purchase, shall be valid against the Corporation unless such Agreement shall (1) be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank."

Any side agreements the parties may have had are unenforceable against the FDIC unless the agreements comply with the requirements of §1823(e). Agreements not to call a note due and to renew the promissory note indefinitely certainly fall within the realm contemplated by 1823(e). *See also, D'Oench, Duhme & Co. v. F.D.I.C.*, 315 U.S. 447 (1942). The Supreme Court concluded in *D'Oench, Duhme* that an undisclosed agreement not to call a note due is the type of secret agreement that could not be asserted as a defense against the FDIC because it would tend to deceive the banking authorities of the bank's actual worth. *Id.* at 460. The Supreme Court reaffirmed this holding in *Langley v. F.D.I.C.*, 108 S.Ct. 396

(1987) and concluded:

"Certainly, one who signs a facially unqualified note subject to an unwritten and unrecorded condition upon its repayment has lent himself to a scheme or arrangement that is likely to mislead the banking authorities, whether the condition consists of performance of a counterpromise (as in D'Oench, Duhme) or of the truthfulness of a warranted fact."

Id. at 402. Even if Century Bank agreed to renew the note indefinitely, the Defendants have presented no compelling reason for this Court to ignore the statutory dictates of §1823(e) or the federal common law established in D'Oench, Duhme. Furthermore, the Supreme Court concluded in Langley that fraud in the inducement is not a valid defense when the bank transfers the note to the FDIC.

"It is clear [the misrepresentations] would constitute only fraud in the inducement, which renders the note voidable but not void. ... The bank therefore had and could transfer to the FDIC voidable title, which is enough to constitute 'title or interest' in the note. This conclusion is not only textually compelled, but produces the only result in accord with the purpose of [§1823(e)]. If voidable title were not an 'interest' under §1823(e), the FDIC would be subject not only to undisclosed fraud defenses but also to a wide range of other undisclosed defenses that make a contract voidable, such as certain kinds of mistakes and innocent but material misrepresentations." (citations omitted).

108 S.Ct. at 402. Taking Defendants' allegations of fraud in the inducement as true, the contract was merely voidable and the FDIC assumed the note free of the defense. Therefore, Defendants' affirmative defenses of estoppel and fraud in the inducement must fail.

Defendants' remaining affirmative defense is the failure of

consideration. Defendants allege consideration failed because they executed the notes in their individual capacities rather than as general partners. Because the Partnership was liable for the construction loan, the individuals received no benefit when they assumed responsibility for the \$115,000 shortfall. It appears the Defendants are exalting form over substance because if they had not signed the loans in their individual capacities the Partnership would have been forced to come forward with the \$115,000.² Defendants, as general partners with unlimited liability, would have had to come forward with the deficiency to close the permanent financing package. As three of the four general partners in the Partnership executed the loan documents which allowed the permanent financing to proceed, Defendants cannot allege they received no benefit when they would have had to come forward with the \$115,000 absent their signatures.

Notwithstanding the factual basis for rejecting Defendants' argument, failure of consideration is not a proper defense at law. Relying upon the Sixth Circuit case of Federal Deposit Insurance Corporation v. Leach, 772 F.2d 1262 (6th Cir. 1985), Defendants assert that §1823(e) does not bar failure of consideration as a defense. The Sixth Circuit concluded, however, that under federal common law the FDIC is immune from the defense of failure of consideration.

"[W]e hold that the FDIC is also immune from

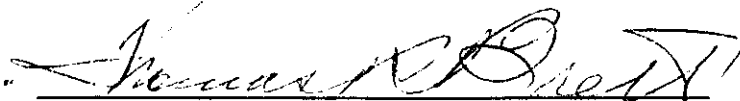
²It is obvious the Partnership could not have signed the loan documents in the first instance or there would not have been a \$115,000 funding shortfall.

the defense of failure of consideration on notes it acquires in the execution of a purchase and assumption transaction, for value, in good faith, and without actual knowledge of the failure of consideration claim at the time it enters into the purchase and assumption agreement."

Id. at 1267. The FDIC acquired this loan in a purchase and assumption agreement executed pursuant to 12 U.S.C. §1823(c)(2)(A). Absent any evidence showing the FDIC did not acquire the note for value, in good faith and without actual knowledge of the alleged failure of consideration, Defendants' assertion of such defense is not valid pursuant to the D'Oench, Duhme doctrine.

As there are no valid defenses to the FDIC's claim presented, it is therefore ORDERED that Plaintiff's Motion for Summary Judgment be sustained.

DATED, this 23rd day of December, 1988.

A handwritten signature in dark ink, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

GLH/LAL/lc
10/26/88

FILED

DEC 27 1988

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

BOBBY LEE BAUER, et al.,)
)
Plaintiffs,)
)
vs.) No. 87-C-66-E
)
ARMSTRONG WORLD INDUSTRIES, INC., et al.,)
)
Defendants.)

ORDER OF DISMISSAL

NOW on this 22nd day of ~~October~~^{DECEMBER}, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Southern Clay Products, Inc. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

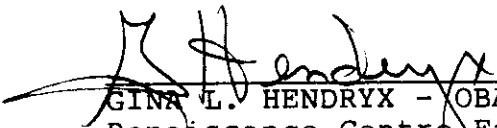
ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant Southern Clay Products, Inc., be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

S/ JAMES O. ELLISON


U.S. DISTRICT JUDGE

LAW OFFICES OF
JOHN W. NORMAN INCORPORATED
ATTORNEYS FOR PLAINTIFFS



GINA L. HENDRYX - OBA #10330
Renaissance Centre East
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

ATTORNEYS FOR SOUTHERN CLAY PRODUCTS, INC.
RICHARDS, PAUL, RICHARDS & SIEGEL



NANCY JANE SIEGEL - OBA #10611
9 E. 4th Street, Suite 400
Tulsa, OK 74103

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHRISTOPHER E. LONGSTRETH,

Plaintiff,

vs.

CITY OF TULSA, OKLAHOMA, a
municipal corporation,
Police Officer DAVID M.
BROCKMAN, Sheriff Frank
Thurman of the County of
Tulsa, Oklahoma,

Defendants.

No. 88-C-346-E

FILED


DEC 23 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

In accordance with the order filed herein on December 9, 1988 sustaining, on its merits, the motion for summary judgment filed jointly by defendants City of Tulsa and police officer David M. Brockman, the court hereby enters judgment in favor of defendants City of Tulsa, Oklahoma, a municipal corporation, and police officer David M. Brockman, and against the plaintiff, Charles E. Longstreth. Plaintiff shall take nothing on his claim. Costs are assessed against the plaintiff. Each party shall be responsible for their own respective attorney fees.

DATED this 22^d day of December, 1988.


James O. Ellison
United States District Judge

FILED
DEC 16 1988
JACK C. STINE, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

MICKEY C. MILLER,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,
et al.,

Defendants.

No. 87-C-859-E ✓

JUDGMENT

This cause comes on to be heard on the separate motions for summary judgment of Defendants United Parcel Service, Inc., and Chauffeurs, Teamsters and Helpers Union, Local No. 516 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and the Court being fully informed in the premises, having prepared and filed an order on December 15, 1988, granting both the Defendants' motions for summary judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there is no genuine issue as to any material fact and that Defendants, and each of them, are entitled to judgment as a matter of law against Plaintiff in conformity with the Court's order entered December 15, 1988; that Plaintiff take nothing against Defendants; and that Defendants, and each of them, have judgment against Plaintiff for their costs.

Dated _____, 198__.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

4

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DANNY R. JACKSON,

Plaintiff,

vs.

EDWARD C. ALDRIDGE, JR.,
SECRETARY OF THE AIR FORCE,

Defendant.

FILED

DEC 23 1988


Jack C. Silver, Clerk
U.S. DISTRICT COURT

Civil Action No. 88-C-621-E

JUDGMENT

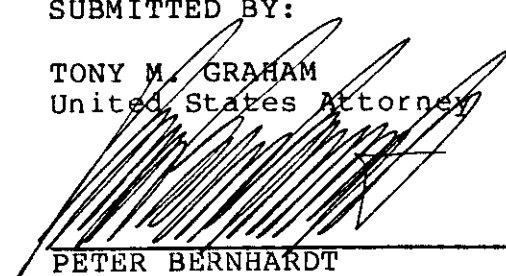
In keeping with the Court's Order filed December 8, 1988, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff's action be dismissed with prejudice, the parties to bear their own costs and attorney's fees.

DATED this 22nd day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

TONY M. GRAHAM
United States Attorney


PETER BERNHARDT
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 23 1988

JACK L. SILVER, CLERK
U.S. DISTRICT COURT

CAESAR C. LATIMER,

Debtor.

Bankruptcy No. 85-00183-C

EMILY L. LATIMER and the unknown
heirs, executors, administrators,
devisees, and assigns of MARIA
LATIMER, Deceased,

Adversary No. 87-0055-C

District Ct. No. 88-C-594-B

Appellant,

vs.

KENNETH L. STAINER, Trustee,

Appellee.


O R D E R

This matter comes before the Court by letter dated December 19, 1988 from David Carpenter, attorney for Appellee, Kenneth L. Stainer, Trustee. The letter requests that the Court dismiss the appeal. The Court will file and treat the letter as a motion to dismiss.

The record on appeal was docketed on November 4, 1988. Appellants have failed to file their brief in chief within fifteen days as mandated in Bankruptcy Rule 8009.

The Court therefore dismisses the action for failure to prosecute.

DATED this 23rd day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 23 1988

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

ANTHAN D. FULLER AND JAN M.
FULLER, husband and wife,

Plaintiffs,

vs.

Case No.: 88-C-69 B

CIRICORP PERSON-TO-PERSON
FINANCIAL CENTER, INC., a
Delaware corporation,

Defendant.

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties and stipulate to the dismissal of the
above styled and numbered cause with prejudice.

FRASIER & FRASIER

By: 

Steven R. Hickman OBA#4172
1700 Southwest Blvd.
P.O. Box 799
Tulsa, OK 74101
918 584-4724

JONES, GIVENS, GOTCHER,
BOGAN, AND HILBORNE

By: 

Randall J. Snapp
3800 First National Tower
Tulsa, OK 74103
918 581-8200

DEC

Alfred C. Sloop,
U.S. DISTRICT COURT

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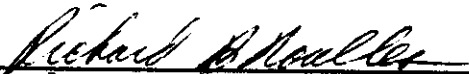
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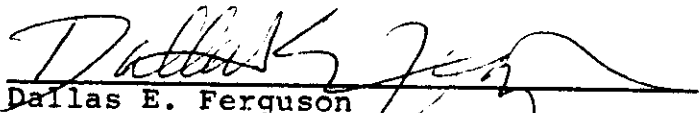
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expenses, including attorney's fees.

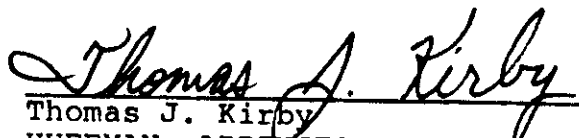
DATED this 27th day of December, 1988.


Richard B. Noulles
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119-1217
(918) 582-9201

ATTORNEY FOR THE L. E. MYERS COMPANY


Dallas E. Ferguson
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

ATTORNEYS FOR PUBLIC SERVICE
COMPANY OF OKLAHOMA


Thomas J. Kirby
HUFFMAN, ARRINGTON, KIEHL,
GABERINO & DUNN
1000 Oneok Plaza
Tulsa, Oklahoma 74103
(918) 585-8141

ATTORNEY FOR ALCAN ALUMINUM
CORPORATION

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES F. MATTHEWS,

Defendant.

DEC 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-1089-E

DEFAULT JUDGMENT

This matter comes on for consideration this 23 day of December, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, James F. Matthews, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, James F. Matthews, was served with Summons and Complaint on November 8, 1988. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

James F. Matthews, for the principal sum of \$23,574.72, plus accrued interest of \$107.38 as of July 31, 1986, plus interest thereafter at the rate of 4 percent per annum until Judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum until paid, plus costs of this action.

ST JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

NNB:do

IN THE UNITED STATES DISTRICT COURT **F I L E D**
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 22 1988

THE WILLOWS CONDOMINIUMS OWNERS'
ASSOCIATION, INC.,

Plaintiff,

vs.

THE FEDERAL DEPOSIT INSURANCE
CORPORATION, et. al.,

Defendants

C. REIFF BROWN and THERESA BROWN

Third-Party Plaintiffs,

vs.

ZORROW PROPERTIES, et. al.,

Third-Party Defendants.

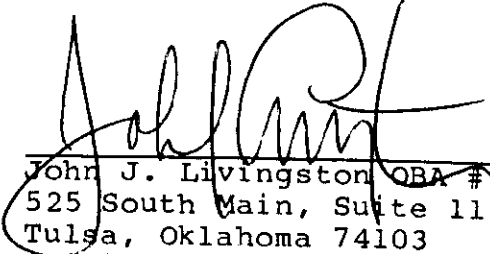
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 88-C-1286-B

Notice of
THIRD-PARTY PLAINTIFFS
VOLUNTARY DISMISSAL OF CROSS-COMPLAINT

COME NOW the Third-Party Plaintiffs, C. REIFF BROWN and THERESA BROWN, and pursuant to the provisions of Rule 41(c) of the Rules of Civil Procedure voluntarily dismiss their Cross-Complaint without prejudice to refile same, no adverse party having served a responsive pleading to the Cross-Complaint or evidence being introduced.

DATED this 22nd day of December, 1988.

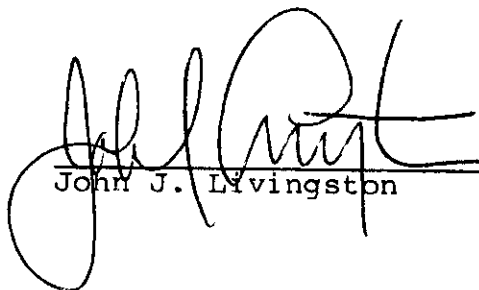

John J. Livingston OBA #5477
525 South Main, Suite 1130
Tulsa, Oklahoma 74103
(918) 592-1812

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 22nd day of December, 1988, a true and correct copy of the above and foregoing instrument was mailed to the following with postage prepaid and properly affixed thereon to:

Jay B. White
JONES, GIVENS, GOTCHER, BOGAN & HILBORNE
Attorneys for Plaintiff
3800 First National Tower
Tulsa, Oklahoma 74103

Mary Victoria Dycus
717 South Houston
Suite 102
Tulsa, Oklahoma 74103



John J. Livingston

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 21 1988

LOUISE HARKAVY and
FRED HARKAVY,

Plaintiffs,

vs .

SOUTHROADS ASSOCIATES,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 87-C-1049-E

ORDER OF DISMISSAL

NOW on this 21 day of Dec, 1988, upon the written application of the Plaintiffs, Louise Harkavy and Fred Harkavy, and the Defendant, Southroads Associates, for a Dismissal With Prejudice of the Complaint of Harkavy v. Southroads, and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the court to dismiss said Complaint with prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the Plaintiffs, and that said Complaint should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the Complaint and all causes of action of the Plaintiffs, Louise Harkavy and Fred Harkavy, against the Defendant, Southroads Associates, be and the same hereby are dismissed with prejudice to any future action.

S/ JAMES O. ELISON

JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

APPROVALS:

MARK K. BLONGEWICZ
RONALD A. WHITE

Ronald A. White
Attorneys for Plaintiffs

JOHN B. STUART

John B. Stuart
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC

OXY NGL, Inc.,
a Maryland corporation,

Plaintiff,

vs.

MID-CON GAS CORP.,
a Texas corporation,

Defendant.

Jack C. Silver,
U.S. DISTRICT COURT

Case No. 88-C-1243E

DISMISSAL WITH PREJUDICE

Because of a Settlement Agreement entered into on December 20, 1988, OXY NGL, Inc., the Plaintiff, dismisses in its entirety, this case No. 88-C-1243E, with prejudice, against MID-CON GAS CORPORATION.



David A. Johnson, OBA #4675
Kenton W. Fulton, OBA #11308
BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza
100 West Fifth Street
Tulsa, OK 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF
OXY NGL, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of December, 1988, a true and correct copy of the above and foregoing Dismissal With Prejudice was placed in the United States mail, postage prepaid to the following:

Joel L. Wohlgemuth, Esq.
R. Jay Chandler, Esq.
Norman, Wohlgemuth & Thompson
909 Kennedy Building
Tulsa, OK 74103



JHP/kgb

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 22 1988

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

SHELTER MUTUAL INSURANCE
COMPANY, a Missouri
corporation,

Plaintiff,

vs.

MICHAEL LAROE JOHNSON, an
individual, CHARLES DANIEL
WILLIAMS, JR., an individual,
and RONNIE WILSON, a minor,
by and through his natural
father and guardian, MATTHEW
WILSON,

Defendants.

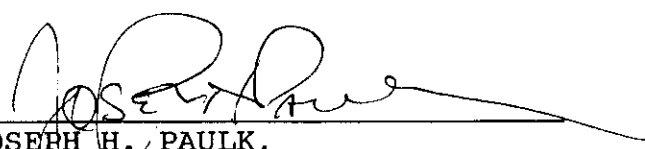
No. 88-C-413-C

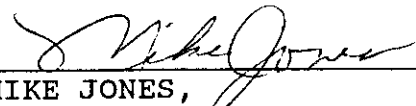
DISTRICT COURT
FILED
DEC 22 1988
DOR E. KUSTIN, COURT CLERK
STATE OF OKLA. TULSA COUNTY

STIPULATION OF DISMISSAL WITH PREJUDICE

Come now the parties to the above-entitled action and
do hereby agree to this Stipulation of Dismissal With Prejudice in
this matter. The parties herein agree to incur all respective
costs and fees associated with this action.

WHEREFORE, premises considered, all parties do hereby
agree to this Stipulation of Dismissal With Prejudice in the
above-entitled action.


JOSEPH H. PAULK,
Attorney for Plaintiff


MIKE JONES,
Attorney for Defendant

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 22 1988

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

vs.

IRL, INC., et al.,

Defendants.

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No. 87-C-197-E

Jack C. Silver, Clerk
U.S. DISTRICT COURT

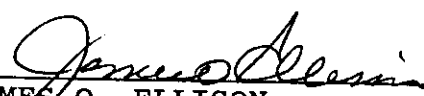
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigations is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 21st day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 21 1988

MID-AMERICA DAIRYMEN, INC.
a Kansas Corporation,

Plaintiff,

vs.

JIM L. TREAT, an individual,
and MARVIN L. MORSE, an
individual,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-449-B

O R D E R

This matter comes before the Court upon Plaintiff's Motion for Summary Judgment. For the reasons set forth below, the Plaintiff's motion is sustained.

Plaintiff is a Kansas corporation with its principal place of business in Missouri. Defendant Treat is President of MAKO, Inc. and Defendant Morse is Vice-President of MAKO, Inc. Both individuals are residents of Oklahoma. MAKO executed a promissory note to Mid-America Dairymen for the principal sum of \$67,500, to be paid in 24 equal installments of \$3,115.66. Additionally, Defendants Treat and Morse individually executed unconditional personal guaranty agreements to secure the debt owed to Mid-America. The promissory note is in default and MAKO is in bankruptcy proceedings. Therefore, Plaintiff initiated this action to enforce the Defendants' personal guaranties and collect the outstanding debt.

Plaintiff's Complaint asserts the right to relief under the guaranty agreements and MAKO's breach of payment. Plaintiff moved

for summary judgment claiming there is no genuine issue as to any material facts concerning the promissory note and loan guaranties in question. In support of its Motion, Plaintiff sets forth copies of the promissory note, the personal guaranties and the Affidavit of Bernie Brownell, the Corporate Credit Manager of Mid-America Dairymen, Inc. The Affidavit states that MAKO executed a promissory note on March 16, 1988 and Defendants herein executed personal guaranties to secure MAKO's debt. Additionally, the Affidavit provides that MAKO is in default and demand has been made upon Treat and Morse. Under Oklahoma law a guarantor of payment is liable to the guarantee immediately upon the default of the principal. 15 Okl.Stat. §321.¹

To survive a motion for summary judgment, Defendant "must establish that there is a genuine issue of material fact as to whether" the personal guaranties were properly executed. Defendant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). Plaintiff has established the existence of the promissory note, the personal guaranties to secure the note and MAKO's default thereon.

Fed.R.Civ.P. 56(e) states:

"... When a motion for summary judgment is made

¹Both the promissory note and the personal guaranties contain an express choice of law provision and state that the laws of the state of Missouri control. A court will assume that a case is to be governed by the laws of the forum unless it is expressly shown that a different law applies. The Scotland, 105 U.S. 24 (1881). Absent contrary authority from either counsel, this Court will rely upon Oklahoma law.

and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial ..."

This rule was explained by Celotex Corporation v. Catrett, 477 U.S. 317 (1986), which holds:

"Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial'"

Defendants assert summary judgment should not be entered because Plaintiff failed to come forward with any admissible evidence proving Defendants' debt. Defendants' sole argument is that the Court cannot rely upon unauthenticated copies of the promissory note and personal guaranties when entertaining a motion for summary judgment. Defendants' assertion is incorrect.

Defendants have not controverted any of the facts set forth in Plaintiff's Motion. Local Rule 15(B) states that a failure to controvert the facts will be deemed an admission. Although Defendants argue the promissory note and personal guaranties attached to the motion are not authenticated, Defendants do not dispute the contents of the writings or Bernie Brownell's Affidavit declaring the truth of the writings. A duplicate writing is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original. Fed. R. Evid. 1003. Defendant's argument is not sufficient to establish

a genuine issue of material fact sufficient to preclude the entry of summary judgment.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment be sustained and the Defendants held individually liable on the personal guaranties in the amount of \$67,500, plus interest.

IT IS SO ORDERED, this 21 day of December, 1988.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARIAH AARON SNOOK, an Infant)
by and through his mother,)
natural guardian and next)
friend, Jewel Greer, and)
JEWEL GREER, Individually)
and personally,)

Plaintiffs,)

vs.)

MELVIN LUNSFORD, LEW GORDON)
TOWN OF OOLOGAH, THELMA KING)
LORI GOLDIZEN, and DOLLIE)
CARRIGER,)

Defendants.)

No. 87-C-550-B

FILED

DEC 2 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

On this 21st day of December 1988, there comes on for consideration, the Application to Dismiss with Prejudice. After examining the Application, the Court finds that the parties have entered into a compromised settlement covering all claims involved in this lawsuit and have requested the Court to dismiss the complaint with prejudice as to any future action. Being fully advised in the premises, the Court finds that the settlement is in the best interest of the minor child and the Court finds that the Application to Dismiss with Prejudice should be approved.

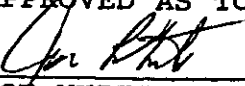
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the complaint and all causes of action of Jewel Greer,

Individually, and as mother and next friend of Mariah Snook,
and the same are hereby dismissed with prejudice as to any
future action.

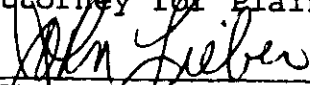
S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:



JOE WHITE
Attorney for Plaintiffs



JOHN HOWARD LIEBER
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 21 1988

CLARA B. FAULKNER, d/b/a
CLARA BELLE'S COUNTRY KITCHEN,

Plaintiff,

-vs-

NATIONAL FIRE INSURANCE COMPANY
OF HARTFORD,

Defendant.)

No. 88- C 1196C

No. C-87-95-D
(State Court)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

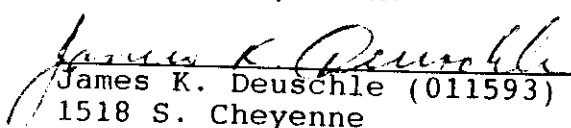
Upon application of the parties hereto, the above-styled action is dismissed with prejudice to the further refiling thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

HOEL, BONNELL, SHELTON, EDMISON
& DEUSCHLE, P. A.


James K. Deuschle (011593)

1518 S. Cheyenne

Tulsa, Oklahoma 74119

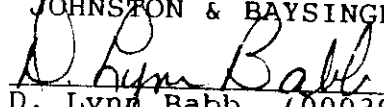
Attorneys for Plaintiff,

Clara B. Faulkner, d/b/a

Clara Belle's Country Kitchen

PIERCE COUCH HENDRICKSON

JOHNSTON & BAYSINGER


D. Lynn Babb (000392)

Post Office Box 26350

Oklahoma City, OK 73126

Attorneys for Defendant,

National Fire Insurance

Company of Hartford

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 21 1968

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

TULSA FUDDRUCKERS ASSOCIATES,)
a Missouri general)
partnership,)

Plaintiff,)

v.)

Case No. 87-C-65C

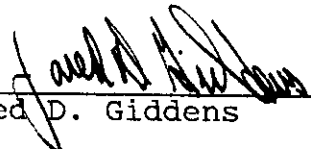
MARNO McDERMOTT, JR., an)
individual; McDERMOTT)
LIMITED PARTNERSHIP, a)
Minnesota limited partner-)
ship; L&B RESTAURANTS, INC.,)
a Delaware corporation;)
J. MICHAEL LARKIN, an)
individual; RUTH ANN)
McDERMOTT, an individual;)
TERESA E. LARKIN, an)
individual; JOHN BUTORAC,)
an individual; BARBARA)
BUTORAC, an individual;)
and FUDDRUCKERS, INC.,)
a Texas corporation,)

Defendants.)

STIPULATION OF DISMISSAL

Pursuant to 41(a)(1)(ii), Fed. R. Civ. P., the Plaintiff, Tulsa FuDDRuckers Associates, desires to dismiss FuDDRuckers, Inc. with prejudice. Plaintiff desires to dismiss Marno McDermott, Jr., McDermott Limited Partnership, L&B Restaurants, Inc., J. Michael Larkin, Ruth Ann McDermott, Teresa E. Larkin, John Butorac and Barbara Butorac without prejudice to refile. All the parties who have appeared in this action


acknowledge Plaintiff's dismissal of this action by the execution of this Stipulation.



Jared D. Giddens

Of the Firm:
Hastie and Kirschner
3000 First Oklahoma Tower
210 West Park Avenue
Oklahoma City, Oklahoma 73102
(405) 239-6404

ATTORNEYS FOR TULSA FUDDRUCKERS
ASSOCIATES



Gene L. Mortensen

Of the Firm:
Rosenstein, Fist & Ringold
525 South Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-9211

ATTORNEYS FOR FUDDRUCKERS, INC.

Mary J. Rounds

Mary J. Rounds

Of the Firm:
Hall, Estill, Hardwick, Gable,
Golden & Nelson
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR MARNO McDERMOTT, JR.,
RUTH ANN McDERMOTT, J. MICHAEL
LARKIN, TERESA E. LARKIN, JOHN
BUTORAC, BARBARA BUTORAC, McDERMOTT
LIMITED PARTNERSHIP and L&B
RESTAURANTS, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM WINGO, an
individual,

Plaintiff,

vs.

AVIS RENT-A-CAR SYSTEMS, INC.,
CHARLES F. BELL, and RON
WILENSKI,

Defendants.

DEC 21 1988

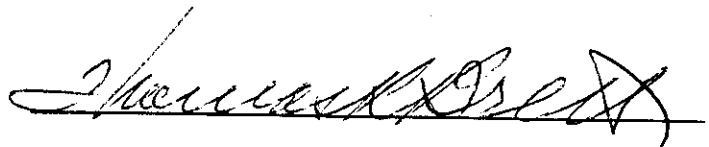
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 87-C-694-B

J U D G M E N T

In accord with the Order filed December 19, 1988 sustaining the Defendants' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, Avis Rent-A-Car Systems, Inc., Charles F. Bell, and Ron Wilenski and against the Plaintiff, William Wingo. The Plaintiff shall take nothing on his claim. Costs are assessed against the Plaintiff. Each party shall be responsible for their own respective attorney fees.

DATED this 21 day of December, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

DEC 21 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

KATHLEEN B. MULLENDORE,)
an individual, and)
KATSY MULLENDORE-MECOM,)
Trustee of Trust A and)
Trust B of the Eugene C.)
Mullendore Testamentary Trust,)

Plaintiffs,)

vs.)

Case No. 88-C-632-C

L.B. LAND AND CATTLE COMPANY)
OF OKLAHOMA, INC., an)
Oklahoma corporation, and)
HERMAN E. BRINKMAN, an)
individual,)

Defendants.)

DEFAULT JUDGMENT

This matter came before me, the undersigned United States District Judge, upon the Motion for Default Judgment filed herein by Plaintiffs and upon the "Entry of Default by Clerk", dated the 15 day of December, 1988, wherein the Court Clerk has verified that a Response to the Amended Complaint herein has not been filed, and that the time for responding thereto has expired, such document being entered by the Clerk pursuant to Local Rule 23C.

The Court, upon consideration of Plaintiffs' Motion for Default Judgment, the aforementioned "Entry of Default by Clerk", and being fully advised in the premises, finds that a judgment by default should be entered herein in favor of the above named Plaintiffs and against L-B Land and Cattle Company of Oklahoma, Inc., an Oklahoma corporation, and Herman E. Brinkman, an individual, Defendants above

named, and each of them for the reason that said Defendants, after being duly and properly served with process herein, have wholly failed to answer Plaintiffs' Amended Complaint, to otherwise plead or enter an appearance herein within the time allowed by law, as a result of which said Defendants, and each of them, are now in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court, as follows:

1. Plaintiffs, Kathleen B. Mullendore, an individual, and Katsy Mullendore-Mecom, Trustee of Trust A and Trust B of the Eugene C. Mullendore Testamentary Trust shall have and recover a money judgment by default against the Defendant herein, L-B Land and Cattle Company of Oklahoma, Inc., an Oklahoma corporation, and Herman E. Brinkman, individually, and each of them, in the following amounts:

(a) The sum of \$26,713.00, as alleged under Plaintiffs' first cause of action, set forth in Plaintiffs' Amended Complaint.

(b) The additional sum of \$212,232.00, as alleged under the second cause of action set forth in Plaintiffs' Amended Complaint.

(c) Plaintiffs shall have and recover further judgment against the above named Defendants for all pre- and post-judgment interest upon the above sums as allowed by law.

(d) Plaintiffs shall have and recover further judgment against the Defendants above named; and each of them, for a reasonable attorneys fee, to be established by the Court Clerk, upon hearing, as requested under Plaintiffs' first cause of action for recovery of rental due under a supplemental grazing lease between the parties as described in the Amended Complaint.

(e) Plaintiffs shall have and recover further judgment against the Defendants for all court costs expended in the prosecution of this action, in an amount to be established by the Court Clerk, upon hearing.

2. In addition to the foregoing, Plaintiffs shall have and recover further judgment against the above named Defendants foreclosing Plaintiffs' security interest in the various items of personal property described in the Amended Complaint (such description being incorporated herein by reference) which were pledged by Defendants as security for certain financial obligations described in the Amended Complaint, which property or collateral is now in Plaintiffs' possession. Plaintiffs are hereby granted further judgment against Defendants confirming Plaintiffs' title in and to such items of personal property and collateral as against the above named Defendants, and each of them, as well as any and all others claiming any interest of any kind whatsoever in such collateral by, through or under said Defendants, or either of them.

3. Upon the sale or other disposition of such property or collateral, the Court shall establish the fair market value thereof, either upon the basis of the sales proceeds resulting therefrom, or the appraised value of such property, which sum shall be deducted from the total amount otherwise owed to Plaintiffs by Defendants as set forth above.

4. The sale of such personal property or collateral, or such alternative disposition thereof as Plaintiffs shall elect, shall be conducted within thirty days within the date of this judgment, and a Return shall thereof be submitted to this Court for approval within ten days thereafter.

IT IS SO ORDERED this 20 day of December, 1988.

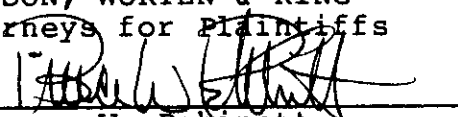
(Signed) H. Dale Cook

United States District Judge

Submitted by:

BREWER, WORTEN, ROBINETT,
JOHNSON, WORTEN & KING
Attorneys for Plaintiffs

By



Bruce W. Robinett
OBA #7667
P.O. Box 1066
Bartlesville, OK 74005
(918) 336-4132

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity,

Plaintiff,

vs.

R. A. SELLERS, III,

Defendant.

Case No. 88-C-0347-C

F I L E D

DEC 21 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT


ORDER OF DISMISSAL

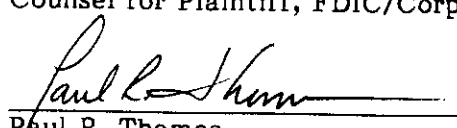
NOW comes on before this Court the Stipulation of Dismissal filed herein by plaintiff, Federal Deposit Insurance Corporation, acting in its corporate capacity ("FDIC/Corporate"), and defendant, R. A. Sellers, III, pursuant to Fed.R.Civ.P. 41(a)(1)(ii), and the Court having reviewed such Stipulation of Dismissal and good cause having been stated in support thereof, hereby ORDERS that the Complaint, commencing this proceeding and filed herein on April 12, 1988, be and the same is hereby dismissed **without prejudice** and with each party bearing its own costs.

IT IS SO ORDERED and DATED this 19 day of December, 1988.

HONORABLE H. DALE COOK,
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED FOR ENTRY:


Robert S. Glass (OBA No. 10824)
Gable & Gotswals, Inc.
Counsel for Plaintiff, FDIC/Corporate


Paul R. Thomas
Jarboe & Stoermer
Counsel for Defendant, R. A. Sellers, III

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 21 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

MID-AMERICA DAIRYMEN, INC.
a Kansas Corporation,

Plaintiff,

vs.

No. 88-C-449-B

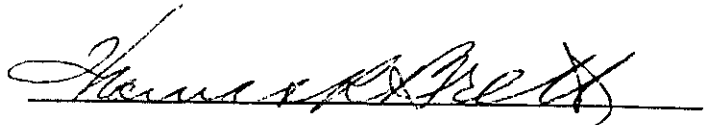
JIM L. TREAT, an individual,
and MARVIN L. MORSE, an
individual,

Defendant.

J U D G M E N T

In accord with the Order filed this date sustaining the Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, Mid-America Dairymen, Inc., and against the Defendants, Jim L. Treat and Marvin L. Morse individually, for the amount of \$67,500, plus interest at the rate of 10 per cent per annum from March 16, 1988 until paid. Costs and attorney fees may be awarded upon proper application.

DATED this 21st day of December, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entire

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

FILED

DEC 21 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

MICHAEL MERRICK,

Plaintiff,

vs.

No. 87-C-290-C

NORTHERN NATURAL GAS COMPANY,

a division of

Enron Corporation; and

LINDA ROBERTS,

Defendants.


JUDGMENT

This matter came before the Court by motion of defendant Linda Roberts for summary judgment as to plaintiff Michael Merrick's claim for intentional infliction of emotional distress. The Court having considered the issues and having rendered a decision as

contained in the Court's Order dated December 9, 1988 affirming the United States Magistrate's Recommendation entered on September 30, 1988,

IT IS ORDERED AND ADJUDGED that defendant Linda Roberts recover over and against plaintiff Michael Merrick on his claim for intentional infliction of emotional distress.

IT IS SO ORDERED this 19th day of December, 1988.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 21 1988

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

RICHLAND RESOURCES CORPORATION,)
)
Plaintiff,)
)
v.)
)
UNITED GAS PIPE LINE COMPANY,)
)
Defendant.)

CASE NO. 88-C-196-E

STIPULATED DISMISSAL WITH PREJUDICE

Plaintiff, Richland Resources Corporation, and defendant, United Gas Pipe Line Company, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, hereby dismiss this action, including all claims, counterclaims and demands which have been asserted or could have been asserted in this cause, with prejudice to any further action. It is stipulated by the parties that they shall each bear their own attorneys' fees and costs.

DATED this 20th day of December, 1988.

By: Caroline B. Benediktson
John L. Arrington, Jr. (OBA #342)
Caroline B. Benediktson (OBA #695)
Justin L. Garrett II (OBA #11842)

HUFFMAN ARRINGTON KIHLE GABERINO & DUNN
A Professional Corporation
1000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 585-8141

ATTORNEYS FOR DEFENDANT
UNITED GAS PIPE LINE COMPANY

By: Melinda J. Martin

Melinda J. Martin
Pamela Dowell Shelton

SNEED, LANG, ADAMS, HAMILTON & BARNETT
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(918) 583-3145

ATTORNEYS FOR PLAINTIFF
RICHLAND RESOURCES CORPORATION

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 20 1988

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

FIRST OKLAHOMA SAVINGS BANK,
F.A.,

Plaintiff,

vs.

ALBERT J. BLAIR, JR.,

Defendant.

No. 88-C-1336-C

J U D G M E N T

This matter came before the Court upon motion for summary judgment brought by plaintiff First Oklahoma Savings Bank. The issues having been duly considered, and a decision having been rendered in accordance with the Order filed simultaneously herein,

IT IS ORDERED AND ADJUDGED that plaintiff First Oklahoma Savings Bank recover judgment over and against defendant Albert Blair, Jr. in the sum of \$468,736.26 as principal with interest at a rate of twelve percent (12%) per annum until paid.

IT IS SO ORDERED this 19th day of December, 1988.


H. DALE COOK

Chief Judge, U. S. District Court

FILED

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

B. W. KLIPPEL, JR.,
Appellant,
vs.
H. J. ENERGY COMPANY, INC.,
Appellee.

)
)
)
)
) No. 88-C-329-E
)
)
)
)

STIPULATION OF DISMISSAL

B. W. Klippel, Jr. ("Klippel"), Appellant and H. J. Energy Company, Inc. ("HJEC"), Appellee respectfully submit this Stipulation of Dismissal pursuant to Bankruptcy Rule 8001(c)(2). In support of this Stipulation the parties state as follows:

1. The issue raised in this appeal has become moot by virtue of the Bankruptcy Court's subsequent order allowing HJEC to abandon the property in question to Klippel.

2. The parties agree to a dismissal of this appeal with both sides to bear their own costs and attorneys fees.

WHEREFORE, the parties pray that the clerk enter an order pursuant to Bankruptcy Rule 8001(c)(2) dismissing this appeal.

Respectfully submitted,
COMFORT, ~~LIPE~~ & ~~GREEN~~, P.C.

By Timothy T. Trump, OBA #10684
2100 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 599-9400

ATTORNEYS FOR
B. W. KLIPPEL, JR.

HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN

By 

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William T. Walker
1000 Oneok Plaza
Suite 1000
Tulsa, Oklahoma 74103
(918) 585-8141

ATTORNEYS FOR
H. J. ENERGY COMPANY, INC.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PROGRAMME CENTRE, INC., an
Oklahoma corporation; ALVIN W.
ROBERTS and CONNIE S. ROBERTS,
husband and wife, ANDERSON
DEVELOPMENT CO., an Oklahoma
corporation,

Defendants.

FILED

DEC 20 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 87-C-1010-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham,
United States Attorney for the Northern District of Oklahoma,
Plaintiff herein, through Phil Pinnell, Assistant United States
Attorney, and hereby gives notice of its dismissal, pursuant to
Rule 41, Federal Rules of Civil Procedure, of this action without
prejudice.

Dated this 20th day of December, 1988.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

Phil Pinnell
PHIL PINNELL
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of December, 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Programme Centre, Inc.
7455 South Winston Place
Tulsa, OK 74136

Connie S. Roberts
7455 South Winston Place
Tulsa, OK 74136

Paul Rineell
Assistant United States Attorney

HDC
AVE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 20 1988

JIMMY LEE TRUNDLE,

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Petitioner,

vs.

No. 88-C-231-C

STATE OF OKLAHOMA AND THE
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA,

Defendants.

ORDER

Now before the Court is the Report and Recommendation of the U. S. Magistrate regarding petitioner's application for a writ of habeas corpus. This Court has independently reviewed the pleadings and supporting affidavits filed by both the petitioner and the respondents and determined that the writ of habeas corpus filed by the petitioner pursuant to 28 U.S.C. §2254 is denied.

On August 15, 1986, the petitioner was arrested for driving under the influence (DUI) of alcohol. Trial was held in the Tulsa County District Court on November 17, 1986. Since the petitioner had been convicted of a previous DUI charge in January of 1986, the August 1986 charge, CRF-82-2332, was a felony under Oklahoma law. O.S. tit.47, §11-902(c)(1986). The petitioner pleaded guilty

without a trial to the August, 1986 DUI charge and was sentenced to eighteen months in prison.

At the time of the August, 1986, DUI violation, the petitioner was serving two five-year concurrent sentences for petit larceny, CRF-83-3133, and Knowingly Concealing Stolen Property, CRF-83-2270. While serving these sentences, the petitioner participated in a program called house arrest. During his time in this program, the petitioner was arrested and charged with DUI.

The basis for petitioner's writ of habeas corpus pursuant to 28 U.S.C. §2254 is that the eighteen-month sentence entered for the DUI violation of August 15, 1986 was to be served concurrently with the existing five-year sentences. Moreover, it is argued that since the petitioner was held in custody by the State of Oklahoma from the date of his arrest until the trial and sentencing on November 17, 1986, the eighteen-month sentence was to begin on August 16, 1986. The respondents concede that the petitioner should receive credit for the time that was spent in the Tulsa County Jail awaiting trial, but that the eighteen-month sentence was to be served consecutive to the existing five-year sentences.

The respondents concede that the petitioner has exhausted all available state remedies. The issue before this Court is whether the petitioner knew the consequences of his guilty plea including whether the eighteen-month sentence would be concurrent or consecutive to the existing five-year sentences. The Supreme Court explained the ramifications of a guilty plea in McCarthy v. United

States, 394 U.S. 459, 466, 89 S.Ct. 1166, 1170, 22 L.Ed.2d 418, 425 (1969):

... A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be "an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464, 82 L.Ed. 1461, 1466, 58 S.Ct. 1019, 146 ALR 357 (1938). Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts. (footnotes omitted).

Under federal law, a trial judge may not accept a guilty plea unless there is an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Rule 11 of the Federal Rules of Criminal Procedure embodies the Supreme Court standards for determining the voluntariness of a guilty plea. See, McCarthy v. United States, supra. Through Boykin, the requirement of showing of voluntariness has been made applicable to the States.

In King v. State, 553 P.2d 529 (Okla.Crim. 1976), the Oklahoma Court of Criminal Appeals set forth the procedure to be used by Oklahoma state judges for determining the validity of a guilty plea. This procedure is strikingly similar to the requirements of Federal Rule 11. One of the requirements under King v. State is for the judge to advise the petitioner of "the nature and consequences" of his guilty plea. Id. at 534.

This Court has reviewed the trial transcript and concludes that the petitioner has entered a plea of guilty that is valid under federal law. The petitioner knew that the sentence to be imposed would be for eighteen months and was thus fully aware of the consequences of his guilty plea. The relevant part of the trial transcript provides as follows:

THE COURT: Do you understand?

Mr. Trundle, what do you understand your sentence is going to be if you plead guilty?

MR. TRUNDLE: Um, a year and a half, sir.

THE COURT: And are those your plea negotiations, Mr. Ramirez?

MR. RAMIREZ: Yes, they are.

THE COURT: And was a fine discussed?

MRS. SMITH: No, Your Honor.

THE COURT: Mandatory fine.

MRS. SMITH: It was left up to you.

THE COURT: Set a \$300.00 fine, there's a mandatory fine.

Now, it's my understanding then, Mr. Trundle, on the recommendation from the State, based on negotiations between your attorney and the District Attorney, on a plea of guilty you are going to be sentenced to serve eighteen months in the custody of the Department of Corrections.

MR. TRUNDLE: Yes, sir, I've got one question.

THE COURT: Yes, sir.

MR. TRUNDLE: Would this be dated as to the date that I was arrested? Jail time on this?

THE COURT: The sentence won't be dated -- the sentence will be dated today, that's the day you are going to be sentenced. But, it's my understanding any time you've served since your arrest on August 16, you'll be given credit for, okay?

MRS. SMITH: Judge, is that even with the understanding that he's still serving DOC time on another charge?

THE COURT: Yeah, my understanding he gets credit for that. Now, is this Application to Revoke in this case?

MRS. SMITH: No, Your Honor.

THE COURT: Now, other than understanding your sentence, have any other promises of any kind been made to you to get you to plead guilty?

MR. TRUNDLE: No, sir, they haven't.

THE COURT: Are you satisfied with the legal representation you've received?

MR. TRUNDLE: Yes, sir, I am well satisfied with my new representation, yes.

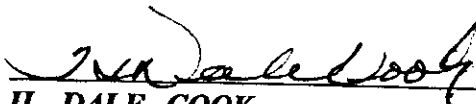
THE COURT: Do you have any questions you want to ask me about anything going on here today?

MR. TRUNDLE: No, sir.

"The Constitution does not require that, in order to understand the consequences of a plea of guilty, the accused must be informed by the trial court, or must otherwise know, whether or not sentences imposed for separate crimes will run consecutively or concurrently." Barbee v. Ruth, 678 F.2d 634, 635 (5th Cir.) cert. denied 459 U.S. 867 (1982). See also Handley v. Page, 398 F.2d 351 (10th Cir. 1968).

The petitioner's writ for habeas corpus under 28 U.S.C. §2254 is DENIED. The Magistrate's Report and Recommendation is OVER- RULED.

IT IS SO ORDERED this 19th day of November, 1988.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**
NORTHERN DISTRICT OF OKLAHOMA

DEC 19 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FRANKS & SON, INC., an
Oklahoma corporation,

Plaintiff,

vs.

GOOCH BRAKE AND EQUIPMENT CO.,
a Missouri corporation,

Defendant and Third
Party Plaintiff,

vs.

GREY-ROCK LIPE, INC., and
MIDLAND BRAKE, INC.,

Third Party Defendants.)

No. 87-C-1061-B

ORDER OF DISMISSAL

NOW on this 19th day of December, 1988, upon the written Stipulation of the Third Party Plaintiff, Gooch Brake and Equipment Company, and the Third Party Defendants, Grey-Rock Lipe, Inc., and Midland Brake, to a Dismissal Without Prejudice of the Third Party Plaintiff's Third Party Petition against the Third Party Defendants, in the case of Franks & Son, Inc., v. Gooch, et al., and all causes of action involved in said Third Party Petition, and the court having examined said Stipulation finds that said parties have entered into an agreement covering all claims involved in the Third Party Petition against said Third Party Defendants, and have stipulated to the dismissal without prejudice of said Third Party Petition. The court

being fully advised in the premises finds that said agreement is in the best interest of the parties, and that said Third Party Petition should be dismissed without prejudice.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that all causes of action of the Third Party Plaintiff, Gooch Brake and Equipment Company, against the Third Party Defendants, Grey-Rock Lipe, Inc., and Midland Brake, Inc., be and the same hereby are dismissed without prejudice.

S/ THOMAS R. BRETT

JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

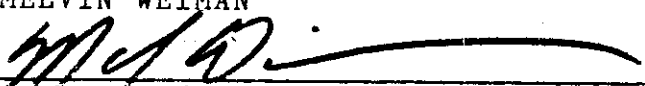
APPROVALS:

SCOTT D. CANNON



Attorney for Defendant and
Third Party Plaintiff

MELVIN WEIMAN



Attorney for Third Party Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DORIS L. HERNANDEZ,
Plaintiff,

vs.

TECHNICAL METALS, INC.,
Defendant.

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No. 88-C-432-B

DEC 19 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court upon Defendant Technical Metals, Inc.'s Motion to Dismiss pursuant to Fed.R.Civ.P 12(b)(1) and 12(b)(6). For the reasons set forth below, the Motion is sustained in part and overruled in part.

Plaintiff was employed by Defendant as an office manager when she was demoted and sustained a reduction in salary. The next day, June 5, 1987, Plaintiff resigned her employment. Plaintiff filed a charge of age and sex discrimination with the Oklahoma Human Rights Commission and the EEOC on November 13, 1987. On December 3, 1987, Plaintiff amended her charge to reflect only sex discrimination.¹ In the original and amended charges, Plaintiff identified Dillard Enterprises, Inc. ("DEI") as her employer and Stephen G. Adams, President of Technical Metals, as her supervisor who made the demotion.

Plaintiff's Amended Complaint attempts to identify numerous federal and pendent state causes of action based upon a pattern

¹Plaintiff's Amended charge noted she had no factual basis on which to support a claim for age discrimination. Consequently, this suit only involves allegations for sex discrimination.

and practice of sex discrimination. In its Motion to Dismiss, Defendant first argues the Court does not have subject matter jurisdiction because Plaintiff identified DEI and not Technical Metals as her employer. In the particular allegations, however, Plaintiff specifically identified Stephen G. Adams, President of Technical Metals, as the person who took the offensive action. In Romero v. Union Pacific Railroad, 615 F.2d 1303 (10th Cir. 1980), the Court of Appeals concluded,

"Although this court has not previously addressed the issue, we are inclined to agree that omission of a party's name from the EEOC charge does not automatically mandate dismissal of a subsequent action under Title VII. Four factors are listed in [Glus v. G.C. Murphy Company, 562 F.2d 880 (3rd Cir. 1977)] as pertinent to an evaluation of the failure to name a party before the EEOC: (1) whether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the EEOC complaint; (2) whether, under the circumstances, the interests of a named are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be unnecessary to include the unnamed party in the EEOC proceedings; (3) whether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party; (4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party."

Id. at 1311-12. The Court concluded the four factors to be considered are not exclusive and additional factors may be relevant. Romero at 1312. In this instance, the Plaintiff did not omit Technical Metals from the charge, but merely identified who she thought was Technical Metals' parent company. The actual

complaint plainly identifies the President of Technical Metals as the person who demoted the Plaintiff. The Court holds the facts in this case are sufficient to give Technical Metals notice of the pending discrimination charge. Therefore, this Court concludes Technical Metals had adequate notice of the charge to satisfy 42 U.S.C. §2000e-5(f)(1) and vest this Court with subject matter jurisdiction.

Defendant also asserts the remaining claims should be dismissed for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). To prevail on a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, Defendant must establish that Plaintiff can prove no set of facts in support of her claim that would entitle Plaintiff to relief. Haines v. Kerner, 404 U.S. 519 (1972). All factual allegations should be construed to the benefit of the pleader. Gardner v. Toilet Goods Assn., 387 U.S. 167 (1967); Lee v. Derryberry, 466 F.Supp. 30 (W.D. Okla. 1978).

Plaintiff relies upon Hinson v. Cameron, 742 P.2d 549 (Okla. 1987), to urge recovery under the tort theory of wrongful discharge. Hinson indicates, at least in dicta, that in an at will employee termination suit, public policy grounds might support a claim in tort. Claims that might be recognized are those by employees fired for exercising a legal right or interest, performing an act that public policy would encourage, or when the discharge is coupled with a showing of bad faith or retaliation. Id. at 552-553. While public policy discourages sex

discrimination, this Court need not carve out a public policy exception to the at will doctrine where sufficient remedies are available by statute. The Plaintiff is limited to relief under Title VII and any claim under Hinson v. Cameron is, therefore, dismissed.

Plaintiff fails to respond to any of the Defendant's remaining arguments, noting that all remaining actions will be dismissed in the Pre-Trial Order. The Court accepts this as a confession of Defendant's arguments and, pursuant to local Rule 15(B), sustains Defendant's Motion to Dismiss with regard to all causes of actions arising under 42 U.S.C. §1981, Executive Order 11246, 25 Okl.Stat. §§1302 and 1601, for relief sought for intentional infliction of emotional distress, and claims arising from a pattern or practice of sex discrimination.

IT IS THEREFORE ORDERED that Defendant's 12(b)(1) Motion to Dismiss with regard to claims for violating 42 U.S.C. §2000e is OVERRULED. It is FURTHER ORDERED that Defendant's 12(b)(6) Motion to Dismiss be SUSTAINED with regard to all remaining claims arising from a pattern or practice of discrimination arising under Title VII, violations of 42 U.S.C. §1981, violations of Executive Order 11246, violations of 25 Okl.Stat. §§ 1302 and 1601, wrongful discharge, and intentional infliction of emotional distress.

Dated, this 19th day of December, 1988.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM WINGO,

Plaintiff,

vs.

AVIS RENT-A-CAR SYSTEMS,
INC., CHARLES F. BELL, and
RON WILENSKY,

Defendants.

No. 87-C-69

✓
DEC 19 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court upon Defendants' Motion for Summary Judgment. Plaintiff initiated this action to seek redress for alleged violations of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1964 ("ADEA").¹ For the reasons stated below, the Motion is sustained.

Plaintiff, William Wingo ("Wingo"), a 55 year old white male, was first employed by Defendant Avis Rent-A-Car System, Inc. ("Avis") on October 18, 1971. In March 1986, Plaintiff received a performance evaluation from his supervisor, Defendant Charles F. Bell ("Bell"). Plaintiff alleges the evaluation was erroneous and resulted in the promotion of Cindy Scanlon, a white female age 32, to a new position above Plaintiff's rank. Claiming he was more qualified for the new position, Plaintiff filed a charge of age discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging Avis and Bell had violated the ADEA. On

¹Plaintiff's original Complaint identified five causes of action. This Court dismissed the fifth cause of action in an Order entered December 29, 1987.

September 18, 1986, Defendant Wilensky terminated Plaintiff's employment with Avis. After his termination, Plaintiff filed an amended charge of discrimination alleging additional violations of the ADEA and Title VII sex discrimination.

Plaintiff alleges that at the time of his termination the Defendants attempted to coerce him into signing a release by which Plaintiff would dismiss his charge of discrimination with the EEOC and forego any claims against Avis in exchange for an extended severance pay package. The release provides:

"In consideration of the payments and other undertakings of Avis described above, I hereby release and discharge Avis, its parent, subsidiaries and affiliated companies, and their respective officers, directors, agents and employees, from all actions, causes of action, suits, debts, damages, judgments, and all claims and demands whatsoever, which I may have, including those arising out of my employment or the termination thereof, except only those arising out of the performance by Avis or its agreements contained in this letter."

(Plaintiff's Exhibit "A" to Brief in Response to Motion for Summary Judgment). Plaintiff asked for time in which to study the release and Avis agreed. Wingo asked for and received additional time so that his attorney could review the release. Wingo's attorney advised him not to sign the release. Against this advice, Wingo signed the release without attempting to negotiate any of the terms contained therein. In consideration for this release, Plaintiff received accrued vacation pay, fifteen (15) weeks' severance pay, and five (5) weeks' extended severance pay so the Plaintiff would

be eligible for early pension benefits.²

Plaintiff initiated this action alleging the release is unenforceable because it lacks sufficient consideration and was executed under duress. There is a strong preference for discrimination claims to be voluntarily settled. U.S. v. Allegheny-Ludlum Industries, Inc., 517 F.2d 826, 846-47 (5th Cir. 1975); Runyan v. National Cash Register Corp., 787 F.2d 1039, 1045 (6th Cir. 1986)(*en banc*), *cert. denied*, 479 U.S. 850 (1986). A release or settlement of claims should be enforced unless it is obtained in an inherently overreaching or exploitive manner. Id. The cornerstone of determining whether a release was obtained in such a manner is to inquire whether the release was given voluntarily and knowingly. Alexander v. Gardner-Denver Co., 415 U.S. 36, 52 n.15 (1974); E.E.O.C. v. Cosmair, Inc., 821 F.2d 1085, 1091 (5th Cir. 1987).

The factors to be relied upon to determine whether a release was knowingly and voluntarily executed are:

1. The clarity and specificity of the release.
2. Plaintiff's knowledge of his rights upon execution of the release.
3. Whether the Plaintiff had the benefit of the advice of counsel.

²Plaintiff was already entitled to the fifteen weeks' severance pay and the accrued vacation pay. Additionally, Plaintiff became vested in Avis' retirement fund after ten years; however, he would not have been eligible for the early pension benefits without the five weeks' of extended severance benefits. (Wingo Deposition, p. 208; Attachment 4 to Defendants' Motion for Summary Judgment).

4. The opportunity for negotiation.
5. Plaintiff's acceptance of the offer of consideration.

Sullivan v. Boron Oil Company, 8 Empl. Ben. Cas. 2590 (3rd Cir. 1987). The previously quoted release specifically contemplates actions arising from Plaintiff's employment and the termination thereof. Although the release did not speak in terms of age and sex discrimination, the Plaintiff knew of his rights regarding such actions as evidenced by his prior charges with the EEOC. Furthermore, a release will be considered knowing when the Plaintiff has the opportunity to consult with an attorney. Sullivan at 2590; Lancaster v. Buerkle Buick Honda Co., 809 F.2d 539 (8th Cir. 1987), *cert. denied*, 107 S.Ct. 3212 (1987); Reed v. Smithkline Beckman Corp., 569 F. Supp. 672 (E.D. Pa. 1983). Not only did Mr. Wingo have the benefit of counsel, but he signed the release against his attorney's advice. This single act greatly underscores Plaintiff's voluntary and knowing release of any potential claims he may have had and discredits any allegation Avis was acting in an inherently overreaching or exploitive manner.

Plaintiff argues the release should be set aside because the consideration was inadequate. In addition to the fifteen weeks' severance pay and accrued vacation pay to which the Plaintiff was already entitled, Avis extended the severance pay by five weeks, thereby entitling the Plaintiff to his early retirement benefits. This Court will only inquire as to the legal adequacy of the consideration and not the sufficiency of the consideration. 15

O.S. §106; Cox v. Freeman, 227 P.2d 670 (Okla. 1951). If Plaintiff felt the consideration was financially inadequate, he should have attempted to alter the terms of the release. Plaintiff, however, signed the release and accepted the benefits enumerated therein.

Plaintiff also asserts the five weeks' extended severance was illusory and does not constitute legal consideration. To support this assertion, Plaintiff relies upon rumor that another unnamed individual received two weeks' severance pay for each year of service, instead of the one weeks' severance pay per year he received. Plaintiff offers no evidence that his severance benefits package violated any of Avis's policies or procedures other than his Affidavit stating that one unnamed person received more severance benefits than himself. This alleged dispute regarding the amount of benefits is not a basis in which to defeat a properly supported motion for summary judgment. Anderson v. Liberty Lobby, 47 U.S. 242 (1986). Finally, Plaintiff argues the five weeks' severance was illusory because he had accumulated over five weeks of vacation time and Avis' extended severance payment was merely giving the Plaintiff something to which he was already entitled. Defendants emphasize that a terminated employee does not remain on the company's payroll for the duration of accrued vacation time, but is paid a lump sum by separate check when the employee receives his final paycheck. (Affidavit of Michael Kacho, Exhibit "A" to Defendants' Reply). The five weeks' of extended severance was in addition to any vacation leave the Plaintiff had accrued. Therefore, this Court concludes there was adequate legal

consideration to support the release of any potential or pending discrimination claims.

Notwithstanding the adequacy of consideration, Plaintiff alleges he executed the release under duress because his wife was in danger of losing her job and thought the funds would be needed. (Wingo Affidavit at ¶¶ 21-22). The Oklahoma Supreme Court recently recognized economic/business duress as a defense to enforcing a contract in Centric Corp. v. Morrison-Knudson, 731 P.2d 411 (Okla. 1986).³ The essential elements of economic duress are (1) the settlement was the result of a wrongful or unlawful act, (2) the act complained of must have deprived the coerced party of its free will, leaving no adequate legal remedy nor reasonable alternative available, and (3) detriment to the complaining party. Id. at 417. The Centric decision noted the defense of economic duress is fact specific. 731 P.2d at 415. In this case, the Plaintiff had the option of signing the release and accepting the extended severance benefits or refusing to sign the release, accepting his accrued severance benefits and suing under the ADEA. Plaintiff clearly had a legal remedy, and he knew of this remedy as evidenced by his actions with the EEOC, if he refused to sign the release. Therefore, Plaintiff's financial duress cannot be considered within the realm of business/economic duress outlined in Centric.

³This Court is hesitant to extend the defense of economic duress to employment litigation absent a more definitive expression from the Oklahoma Supreme Court. This Order merely entertains the issue to illustrate that Plaintiff fails to meet the standards enumerated if they were to be applicable in the employment context.

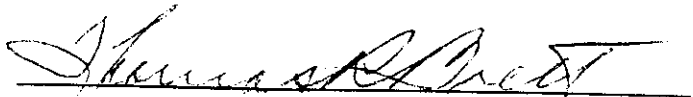
Plaintiff's remaining two claims are for sex discrimination and breach of an employment contract. In Plaintiff's Response to Defendants' Motion for Summary Judgment, Plaintiff states:

"Plaintiff has also filed a Motion to Dismiss Count 3 regarding sex discrimination, Count 4 regarding breach of implied contract, and to dismiss the individual defendants Bell and Wilensky. Discovery completed to date has not revealed sufficient evidence to justify Plaintiff's proceeding on these issues. Plaintiff will not address these issues in this Brief, and will move to voluntarily dismiss them."

(Plaintiff's Response at p. 2). Pursuant to local Rule 15(B), the Court hereby grants with prejudice Plaintiff's Motion to Dismiss Count 3, Count 4, and individual defendants Bell and Wilensky.⁴

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment be Sustained and the case dismissed.

IT IS SO ORDERED, this 19th day of December, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

⁴Since Plaintiff's Objection did not respond to Defendants' Motion for Summary Judgment with regard to Count 3, Count 4, and the individual defendants, the Court accepts this as an admission pursuant to Local Rule 15(B). This rule provides that a failure to object to a motion will constitute a confession of the matters raised by such pleadings.

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 19 1988

DENNIS STEPHEN WALDON,
Petitioner,
v.
JACK COWLEY, Warden,
Respondent.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

87-C-259-B

ORDER

Now before the Court is the Petition for a Writ of Habeas Corpus of Dennis S. Waldon pursuant to 28 U.S.C. §2254. Petitioner seeks to attack his judgment and sentence in Tulsa County, Case No. CRF 79-6603 (for Knowingly Concealing Stolen Property). The conviction was based on a guilty plea, which Petitioner now argues was constitutionally infirm.

Petitioner pled guilty to the charge on May 25, 1979.¹ He was to appear thereafter on June 29, 1979 for sentencing. He intentionally failed to appear (escaped from custody) and did not appear for sentencing until June 9, 1980.

At sentencing, Petitioner decided he wanted to withdraw his plea but the Court denied the motion to withdraw.²

The standard by which the validity of a guilty plea is tested is set forth in the cases of Boykin v. Alabama, 395 U.S. 238 (1969), McCarthy v. U.S., 394 U.S. 459 (1969), and North Carolina v. Alford, 400 U.S. 25 (1970). The standard, simply

¹ A transcript is attached as Exhibit A to Respondent's Response to the Petition for Writ of Habeas Corpus, (docket #21).

² No transcript is available of the sentencing and the reporter's notes cannot be located.

put, is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the Defendant. Williams v. Meachum, 592 F.Supp. 281, 284 (N.D. Okla. 1984). The plea is to be set aside only if it effects a miscarriage of justice. Evers v. U.S., 579 F.2d 71 (10th Cir. 1978).

As set forth in his Traverse (docket #22), Petitioner argues that the defect in his plea results from the Court's failing to advise him of his constitutional rights on June 9th, 1980 (prior to sentencing).

Petitioner explains:

"1. That the guilty plea in question before this Honorable Court is the one had on the 9th of June, 1980. Not the guilty plea entered into on the 25th day of May, 1979."

(Traverse, at ¶1.)

* * *

"8. ... That the guilty plea hearing had on June 9th, 1980, amounted to an involuntary plea. That, and the fact that the Judge on June 9th, 1980 did not inform or advise your petitioner of his constitutional rights amounted to a plea by ignorance of the rights waived.

(Traverse, at ¶8.)

It is a mistaken assumption that the U.S. Constitution requires a criminal defendant be advised of his rights both prior to entering a guilty plea and prior to sentencing. Once Petitioner's plea was offered and properly accepted on the 25th day of May, 1979, the trial court's refusal to allow Petitioner to withdraw his plea in June 1980 is judged by a different standard.

Under Oklahoma law, a trial court has discretion in ruling on a motion to withdraw a guilty plea. Elmore v. State, 624 P.2d 78, 80 (Okla. Crim. App. 1981). The same is true under federal law. U.S.A. v. Keiswetter, ___ F.2d ___ (10th Cir. Nov. 4, 1988).

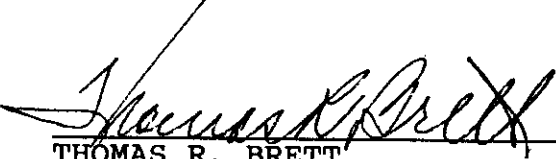
Petitioner has not alleged the trial court abused its discretion. Petitioner has not alleged that the guilty plea was entered through inadvertence or ignorance, or that he had a valid defense that should be presented to the jury. Petitioner did not advance any compelling reason for permitting withdrawal of the plea.

Instead, as Petitioner testified at the hearing before the Magistrate, when he learned that the sentencing judge would not follow the bargained-for six (6) months sentence recommendation but sentence Petitioner to five (5) years instead, Petitioner decided he wanted a jury trial. (Magistrate's Findings and Recommendation, (docket #17), at 3.)

It is clear that Petitioner was not denied a constitutional right to be informed of his Boykin rights prior to being sentenced in June 1980, for there is no such constitutional requirement. It is equally clear that the denial of his motion to withdraw his guilty plea has not been shown to be a violation of his federal constitutional rights. Petitioner is not entitled to federal habeas relief on the grounds alleged.

Therefore, the Petition for Writ of Habeas Corpus is denied.

So ORDERED this 19th day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ELMER CLARK and
FLORENCE CLARK,

Plaintiffs,

vs.

AMERICAN BANKERS INSURANCE
COMPANY OF FLORIDA and
GENERAL ELECTRIC CREDIT
CORPORATION,

Defendants.)

No. 87-C-840 C ✓

FILED

DEC 19 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

Now on this 15th day of December, 1988, this matter comes on for hearing upon the joint application filed by General Electric Credit Corporation, and the court finds that same should be granted.

IT IS THEREFORE ORDERED that the cause filed by General Electric Credit Corporation against all parties be dismissed with prejudice.


JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEVIN D. DAVIS; TERESA K. DAVIS;
COUNTY TREASURER, Ottawa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Ottawa County,
Oklahoma,

Defendants.

FILED

DEC 19 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-638-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day
of Dec, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Ottawa County, Oklahoma, and
Board of County Commissioners, Ottawa County, Oklahoma, appear by
Morland T. Barton, Assistant District Attorney, Ottawa County,
Oklahoma; the Defendant, Teresa K. Davis, appears by her attorney
Charles C. Chesnut; and the Defendant, Kevin D. Davis, appears
not, but makes default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Kevin D. Davis, was served
with Summons and Complaint on August 25, 1988; that Defendant,
Teresa K. Davis, was served with Summons and Complaint on
September 16, 1988; and that Defendant, County Treasurer, Ottawa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on August 31, 1988.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer herein on September 23, 1988; that the Defendant, Teresa K. Davis, filed her Answer herein on September 28, 1988; and that the Defendant, Kevin D. Davis, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 9, Block 11, in PHASE III KEY WEST ADDITION to the City of Miami, Ottawa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on December 10, 1985, the Defendants, Kevin D. Davis and Teresa K. Davis, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$42,500.00, payable in monthly installments, with interest thereon at the rate of 10.625 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Kevin D. Davis and Teresa K. Davis, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated December 10, 1985, covering the above-described property. Said mortgage was recorded on December 10, 1985, in Book 447, Page 519, in the records of Ottawa County, Oklahoma.

The Court further finds that on December 10, 1985, Defendants, Kevin D. Davis and Teresa K. Davis, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on October 22, 1986, Defendants, Kevin D. Davis and Teresa K. Davis, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendants, Kevin D. Davis and Teresa K. Davis, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Kevin D. Davis and Teresa K. Davis, are indebted to the Plaintiff in the principal sum of \$42,173.27, plus accrued interest in the amount of \$2,612.44 as of June 23, 1988, plus interest accruing thereafter at the rate of 10.625 percent per annum or \$12.2765 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$5,984.19, plus interest on that sum at the legal rate from judgment until paid.

The Court further finds that Teresa K. Davis was granted a divorce from Kevin DeWayne Davis by Journal Entry of Divorce

Decree, Case No. JFD-86-285, filed on December 29, 1986, in the District Court of Ottawa County, State of Oklahoma. Kevin DeWayne Davis was awarded the subject real property subject to a mortgage to the Farmers Home Administration, and Teresa K. Davis was relieved of any obligation therefor.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Kevin D. Davis in personam, and Defendant, Teresa K. Davis in rem, in the principal sum of \$42,173.27, plus accrued interest in the amount of \$2,612.44 as of June 23, 1988, plus interest accruing thereafter at the rate of 10.625 percent per annum or \$12.2765 per day until judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$5,984.19, plus interest on that sum at the current legal rate of 9.20 percent per annum from judgment until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

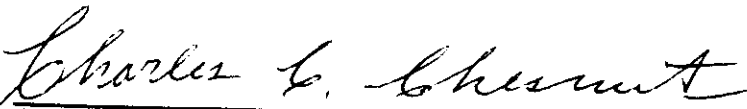
UNITED STATES DISTRICT JUDGE

APPROVED:

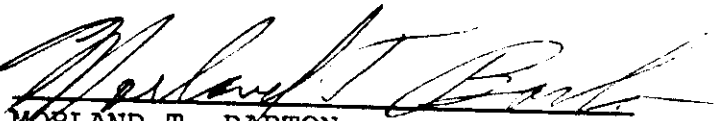
TONY M. GRAHAM
United States Attorney



PHIL PINNELL
Assistant United States Attorney



CHARLES C. CHESNUT
Attorney for Defendant, Teresa K. Davis



MORLAND T. BARTON
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Ottawa County, Oklahoma

PP/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM BRADFORD INGE; MARY
BETH INGE; DORIS ANN SIMON;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma;

Defendants.

FILED

DEC 19 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-591-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19th day
of December, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
Doris L. Fransein, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendants, William Bradford Inge and Mary Beth
Inge, appear by their attorney Frank M. Rowell, Jr.; and the
Defendant, Doris Ann Simon, appears not, but makes default.

The Court being fully advised and having examined the
file herein finds that the Defendant, William Bradford Inge,
acknowledged receipt of Summons and Complaint on June 28, 1988;
that the Defendant, Mary Beth Inge, acknowledged receipt of
Summons and Complaint on June 29, 1988; that the Defendant, Doris
Ann Simon, acknowledged receipt of Summons and Complaint on

July 13, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 30, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 29, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on July 18, 1988; that the Defendants, William Bradford Inge and Mary Beth Inge, filed their Answer and Cross-Claim herein on July 18, 1988; and that the Defendant, Doris Ann Simon, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Ten (10), Block Three (3), GANTZ ADDITION
to the City of Tulsa, Tulsa County, State of
Oklahoma, according to the Recorded Plat
thereof.

The Court further finds that on June 8, 1984, the Defendants, William Bradford Inge and Mary Beth Inge, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$24,250.00, payable in monthly installments, with interest thereon at the rate of thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, William Bradford Inge and Mary Beth Inge, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated June 8, 1984, covering the above-described property. Said mortgage was recorded on June 12, 1984, in Book 4796, Page 1366, in the records of Tulsa County, Oklahoma.

The Court further finds that on or about April 30, 1987, the Defendants, William Bradford Inge and Mary Beth Inge, sold the property to the Defendant, Doris Ann Simon, who assumed and agreed to pay all amounts becoming due on the mortgage note and real estate mortgage described herein. The Plaintiff did not release the Defendants, William Bradford Inge and Mary Beth Inge, from their personal liability thereon.

The Court further finds that on August 23, 1988, Doris Ann Simon f/k/a Doris Ann Williams filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-02509-C. On November 4, 1988, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described above.

The Court further finds that the Defendant, Doris Ann Simon, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly

installments due thereon, which default has continued, and that by reason thereof the Defendants, William Bradford Inge and Mary Beth Inge, are indebted to the Plaintiff in the principal sum of \$23,837.49, plus interest at the rate of 13 percent per annum from October 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Doris Ann Simon, failed to make the required payments on the aforesaid note and mortgage and is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, William Bradford Inge and Mary Beth Inge, in the principal sum of \$23,837.49, plus interest at the rate of 13 percent per annum from October 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Doris Ann Simon and County Treasurer and Board of

County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, William Bradford Inge and Mary Beth Inge, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:


In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.



UNITED STATES DISTRICT JUDGE

APPROVED:


TONY M. GRAHAM
United States Attorney



PHIL PINNELL
Assistant United States Attorney



FRANK M. ROWELL, JR.
Attorney for Defendants,
William Bradford Inge and Mary Beth Inge



DORIS L. FRANSEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

PP/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COMMODITY FUTURES TRADING COMMISSION

Plaintiff,

v.

THOMAS N. HALL, individually and d/b/a
MARKET EXCHANGE INDEX LTD.,

THD, INCORPORATED,
an Oklahoma corporation,

NOEL L. WELSH, individually and d/b/a
WELSH ENTERPRISES,

and

MARKET EXCHANGE INDEX, a partnership,

Defendants.

Civil Action No.
88C 318B ✓

FILED

JS DEC 19 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER


This matter comes on for hearing pursuant to the Order to Appear and Show Cause entered herein on November 18, 1988. The Court has jurisdiction of the parties hereto and the subject matter and venue is proper.

The Court finds that Donald E. Brooks has agreed to deliver a cashier's check payable to Gary C. Clark, Equity Receiver for Market Exchange Index, Ltd. in the amount of \$47,560 not later than December 7, 1988, and has agreed to turn over the additional sum of \$49,688.14 to the Receiver not later than December 16, 1988, in response to the Receiver's Motion to Compel Custodian to Turn Over Property of the Receivership Estate.

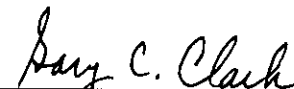
The Receiver has requested that the Court continue this hearing with respect to issues concerning the accounting of the funds received by Mr. Brooks from the account at Saul Stone and Company and Mr. Brooks' liability with respect to the proceeds of the funds received from such account after March 18, 1988.

IT IS THEREFORE ORDERED that Donald E. Brooks turn over to the Receiver the sum of \$97,248.14 in cashier's checks, deliverable as follows: \$47,560.00 not later than December 7, 1988, and \$49,688.14 not later than December 16, 1988.

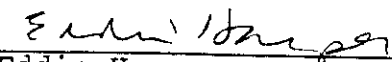
IT IS FURTHER ORDERED that the issues of accounting and Brooks' liability with respect to the proceeds of the funds received from the Saul Stone and Company account be continued to be reset upon application of the Receiver.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Approved as to form and content:



Gary C. Clark, OBA #001696
Baker, Hoster, McSpadden,
Clark, Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555
Temporary Equity Receiver



Eddie Harper
323 E. Carl Albert Parkway
McAlester, Oklahoma 74501
Attorney for Donald E. Brooks

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

BUDDY LEROY JENNINGS,

Plaintiff,

vs.

GENERAL MOTORS CORP. AND
RYDER TRUCK RENTALS, INC.

Defendants,

No. 88-C-322-C

F I L E D

DEC 19 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Now on this 19 day of Dec, 1988, there comes on for review of the Court the parties Application for Dismissal With Prejudice. Upon reviewing the Application, the Court finds said request meritorious and hereby grants the same.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled action is dismissed with prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Koolatron Corp.
Plaintiff(s),
vs.
Otasco, Inc.
Defendant(s).

No. 88-C-366-C

FILED

DEC 19 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 90 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 14th day of December, 1988.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HUTTON/INDIAN WELLS 1983 ENERGY
INCOME FUND, LTD., a Colorado
partnership,

Plaintiff,

v.

ZGEN, INC.

Defendant.

No. 86-C-872-E

AGREED JUDGMENT


On this 14 day of Dec, 1988, this cause comes on for consideration by the undersigned Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff Hutton/Indian Wells 1983 Energy Income Fund, Ltd. ("Hutton/Indian Wells") appears by counsel, Sneed, Lang, Adams, Hamilton & Barnett (Pamela D. Shelton), and Defendant ZGEN, Inc. ("ZGEN") appears by counsel, Conner & Winters (J. David Jorgenson). The parties stipulate that judgment should be entered in favor of Hutton/Indian Wells and against ZGEN in the principal amount of \$75,000.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of Plaintiff Hutton/Indian Wells 1983 Energy Income Fund, Ltd. and against Defendant ZGEN, Inc. in the principal amount of \$75,000.00.

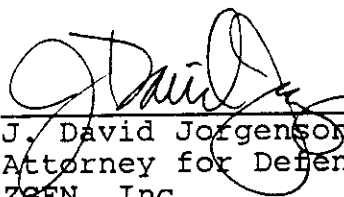
S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

APPROVED AS TO FORM
AND CONTENT:



Pamela D. Shelton
Attorney for Plaintiff
Hutton/Indian Wells 1983 Energy
Income Fund, Ltd.



J. David Jorgenson
Attorney for Defendant
ZGEN, Inc.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

BRYAN B. BRASWELL,
28005880

Defendant,

CIVIL NUMBER 88-C-728 E

DEFAULT JUDGMENT

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN District of Oklahoma, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, BRYAN B. BRASWELL, in the principal sum of \$2780.93, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$19.68. Future costs and interest at the legal rate of 8.55%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 15 day of December, 1988.

U.S. DISTRICT COURT CLERK
NORTHERN DISTRICT OF OKLAHOMA

By:

M. JAMES W. GIBSON
~~Deputy Clerk~~ U.S.D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 14 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FIRST FEDERAL SAVINGS AND
LOAN ASSOCIATION, DAVENPORT,
IOWA, et al.,

Plaintiffs,

vs.

J. W. HOYT & ASSOCIATES,
et al.,

Defendants.

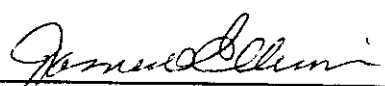
No. 86-C-1013-E

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled with regard to Defendant First Oklahoma Mortgage and Investment Company. IT IS THEREFORE ORDERED that the action be dismissed without prejudice with regard to Defendant First Oklahoma Mortgage and Investment Company. The Court retains complete jurisdiction to vacate this order and to reopen the action against this Defendant upon cause shown within twenty (20) days that settlement has not been completed and further litigations is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 15th day of December, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CONNIE THOMPSON,

Plaintiff,

vs.

SUSAN HEATH, et al.,

Defendants.

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)
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No. 87-C-419-E

JUDGMENT AS TO DEFENDANT BOARDS

On June 1, 1988, the undersigned United States District Judge entered an Order of Dismissal dismissing counts 2 through 7 in the above entitled action on June 1, 1988, in favor of Defendants Board of Commissioners of County of Creek, State of Oklahoma, and Excise Board, County of Creek, State of Oklahoma.

On December _____, 1988, the undersigned United States District Judge entered an Order Granting Directed Verdict as to Defendant Boards in the above entitled action in favor of Defendants Board of Commissioners of County of Creek, State of Oklahoma, and Excise Board, County of Creek, State of Oklahoma.

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits, and the the defendants, Board of Commissioners of County of Creek, State of Oklahoma, and Excise Board, County of Creek, State of Oklahoma, recover of the plaintiff, Connie Thompson, their costs of action.

DATED this 14 day of December, 1988.

JAMES O. ELLISON
United States District Judge

APPROVED AS ~~TO~~ FORM:

Chadwick Smith
Attorney for Plaintiff

John L. Harlan
Attorney for Defendant Heath


Lantz McClain
Attorney for Defendant Boards

IT IS ORDERED that defendants' Board of Commissioners of County of Creek, State of Oklahoma, and Excise Board, County of Creek, State of Oklahoma, motion for directed verdict be, and it is hereby, granted.

DATED this _____ day of December, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Chadwick Smith
Attorney for Plaintiff


John L. Harlan
Attorney for Defendant Heath


Lantz McInain
Attorney for Defendant Boards

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CONNIE THOMPSON,

Plaintiff,

vs.

SUSAN HEATH,

Defendant.

)
)
)
)
)
)
)
)
)

No. 87-C-419-E

JUDGMENT AS TO DEFENDANT HEATH

On June 1, 1988, the undersigned United States District Judge entered an Order of Dismissal dismissing counts 2 through 7 in the above entitled action on June 1, 1988, in favor of Defendant Susan Heath.

Count 1 came on for trial before the undersigned United States District Judge, being tried before a jury on November 21, 22, and 28, 1988. The issues having been duly tried, and the jury having duly rendered its verdict,

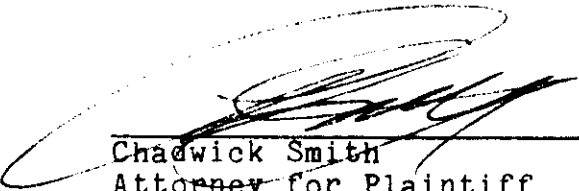
IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits, and the the defendant, Susan Heath, recover of the plaintiff, Connie Thompson, her costs of action.

DATED this _____ day of December, 1988.

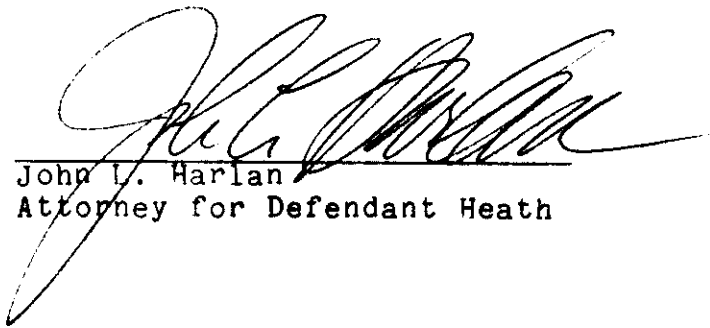
S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

APPROVED AS TO FORM:



Chadwick Smith
Attorney for Plaintiff



John L. Harlan
Attorney for Defendant Heath

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 11 1988

IRENE E. COOPER,
Plaintiff,

vs.

M. PAUL GUEST, et al.,
Defendants.


No. 88-C-290-E

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The parties having filed their joint motion for approval of settlement agreement, and the Court approving same, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

ORDERED this 15th day of December, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

DEC 17 1988

IRENE E. COOPER,
Plaintiff,

vs.

M. PAUL GUEST, a/k/a PAUL
GUEST, an individual,
TRANSPORTATION MANAGEMENT I,
LIMITED, a limited partnership)
Defendants.

No. 88-C-290-E

Jack C. Silver, Clerk
U.S. DISTRICT COURT

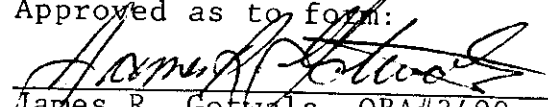
ORDER APPROVING OF SETTLEMENT AGREEMENT

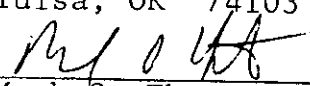
THIS cause come on this 14th day of December, 1988,
before the undersigned Judge on the Plaintiff and
Defendant's Application for Settlement Agreement. Having
reviewed said Application and being fully advised in the
premises, the Court finds that the same should be approved.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
Court that upon the execution and delivery of the promissory
note referred to in said Settlement Application the Court
directs that the Plaintiff disclaim any interest in the
Defendant's partnership or the tractor/trailers owned
thereby, and dismiss this cause with prejudice, and the same
shall be fully and completely settled.


JUDGE OF THE UNITED STATES COURT

Approved as to form:


James R. Gotwals, OBA#3499
JAMES R. GOTWALS & ASSOCIATES, INC.
Attorneys for the Plaintiff
525 South Main, Suite 1130
Tulsa, OK 74103 (918) 599-7088


Mark O. Thurston, OBA# 9008
Attorney for the Defendants
5314 South Yale, Suite 310
Tulsa, OK 74125 (918) 466-0252

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NOEL F. GLENN; BILLIE M. GLENN;
DOUG ROPER; LAJEAN ROPER;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma, and STATE OF OKLAHOMA
ex rel. OKLAHOMA TAX COMMISSION,

Defendants.

CIVIL ACTION NO. 88-C-520-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of Dec, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Doris L. Fransein, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, State of
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney
Robert B. Struble; and the Defendants, Noel F. Glenn, Billie M.
Glenn, Doug Roper, and LaJean Roper appear not, but make
default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Noel F. Glenn and
Billie M. Glenn, were served with Summons and Amended Complaint
on September 15, 1988; that the Defendants, Doug Roper and LaJean

Roper, acknowledged receipt of Summons, Complaint, and Amended Complaint on June 23, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Amended Complaint on June 23, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 10, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 8, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers to Amended Petition herein on June 28, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer and Cross-Petition herein on July 8, 1988; and that the Defendants, Noel F. Glenn, Billie M. Glenn, Doug Roper, and LaJean Roper, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots Thirty-one (31), Thirty-two (32), Thirty-three (33), and Lot Thirty (30), less the West Five (5) feet thereof, in Block Seven (7), HOMESTEAD ADDITION to the Town of Broken Arrow, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on September 25, 1986, the Defendants, Noel F. Glenn and Billie M. Glenn, executed and

delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$26,500.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Noel F. Glenn and Billie M. Glenn, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated September 25, 1986, covering the above-described property. Said mortgage was recorded on September 26, 1986, in Book 4972, Page 941, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Noel F. Glenn and Billie M. Glenn, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Noel F. Glenn and Billie M. Glenn, are indebted to the Plaintiff in the principal sum of \$26,653.86, plus interest at the rate of 9.5 percent per annum from November 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Income Tax Warrant No. ITI88006362, dated May 27, 1988, and recorded on June 6, 1988, in Book 5104, Page 959 in the records of Tulsa County, Oklahoma, in the amount of \$77.29, plus penalties and interest accrued and accruing. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Doug Roper and LaJean Roper, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Noel F. Glenn and Billie M. Glenn, in the principal sum of \$26,653.86, plus interest at the rate of 9.5 percent per annum from November 1, 1986 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$77.29, plus penalties and interest accrued and accruing by virtue of Income Tax Warrant

No. ITI88006362, dated May 27, 1988, and recorded on June 6, 1988, in Book 5104, Page 959 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Doug Roper, LaJean Roper, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Noel F. Glenn and Billie M. Glenn, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$77.29, plus penalties and interest accrued and accruing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

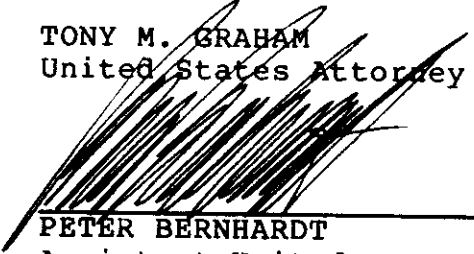
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


BY JAMES O. ELLISON


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PETER BERNHARDT
Assistant United States Attorney


ROBERT B. STRUBLE
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Tax Commission


DORIS L. FRANSEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

PB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THE STATE OF OKLAHOMA, ex rel.
Department of Transportation;
and the Board of County
Commissioners of Tulsa County;

Plaintiff,

vs.

ABBEY WILSON a/k/a ABBEY
WASHINGTON, et al.,

Defendants.

FILED

DEC 16 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 88-C-1321-C

STIPULATION OF DISMISSAL

The Plaintiffs, State of Oklahoma, ex rel. Department of Transportation and the Board of County Commissioners of Tulsa County, through their attorneys of record, Morris Bell and Dick Blakley and the Defendants, Abbey Wilson a/k/a Abbey Washington, the United States of America on behalf of its Agency, the United States Department of Interior, Jerry Washington, and the Tulsa County Treasurer, through their attorneys Keith Ham, Sam Allen IV, Phil Pinnell, Kathleen Miller, and Doris Fransein, having fully settled all claims asserted by the Plaintiff in this litigation hereby stipulate to the dismissal of all such claims with prejudice.

Dated this 16th day of December, 1988.

Attorney for the United States of America
ex rel. the Department of Interior

TONY M. GRAHAM
United States Attorney




PHIL PINNELL
Assistant U.S. Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

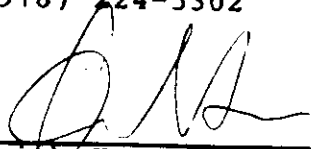


Kathleen Miller
Staff Attorney
U.S. Department of Interior
P.O. Box 3156
Tulsa, Oklahoma 74101

Attorney for Defendant Abbey Wilson a/k/a
Abbey Washington and Defendant Jerry
Washington



Sam T. Allen, IV, OBA #232
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(918) 224-5302




Keith Ham, OBS #3746
P.O. Box 230
Sapulpa, Oklahoma 74067
(918) 224-5302

Attorney for Plaintiff State of Oklahoma,
ex rel Department of Transportation:

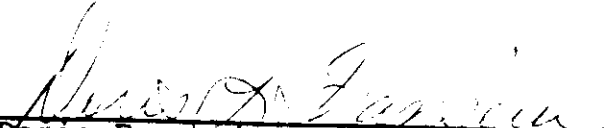
Morris R. Bell
Morris R. Bell, OBA #684
Staff Attorney
200 N.E. 21st Street
Oklahoma City, Oklahoma 73105
(405) 521-2681

Attorney for Plaintiff Board of County
Commissioners of Tulsa County



Dick A. Blakley
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Tulsa, Oklahoma 74103
(918) 584-0440

Attorney for Defendant Tulsa County Treasurer



Doris Fransein
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 584-0440

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BOBBY C. MCGONIGAL; PATTY S.
MCGONIGAL; AETNA FINANCE
COMPANY; COUNTY TREASURER,
Washington County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Washington County, Oklahoma,

Defendants.

CIVIL ACTION NO. 88-C-640-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15 day
of Dec, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, Bobby C. McGonigal; Patty S. McGonigal;
Aetna Finance Company; County Treasurer, Washington County,
Oklahoma, and Board of County Commissioners, Washington County,
Oklahoma, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Bobby C. McGonigal,
acknowledged receipt of Summons and Complaint on or about
July 25, 1988; that the Defendant, Patty S. McGonigal,
acknowledged receipt of Summons and Complaint on July 22, 1988;
that the Defendant, Aetna Finance Company, was served with
Summons and Complaint on September 26, 1988; that Defendant,

County Treasurer, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on July 19, 1988; and that Defendant, Board of County Commissioners, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on July 14, 1988.

It appears that the Defendants, Bobby C. McGonigal; Patty S. McGonigal; Aetna Finance Company; County Treasurer, Washington County, Oklahoma; and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

The West 272.25 feet of the South 160 feet of the North 782.9 feet of Lot 3 of Section 23, Township 25 North, Range 12 East of the Indian Meridian.

The Court further finds that on April 23, 1987, Bobby Clovis McGonigal and Patty Sue McGonigal filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-01069. On August 4, 1987, Bobby Clovis McGonigal and Patty Sue McGonigal were discharged of all dischargeable debts under 11 U.S.C. § 523.

The Court further finds that on August 8, 1978, the Defendants, Bobby C. McGonigal and Patty S. McGonigal, executed and delivered to the United States of America, acting through the

Farmers Home Administration, their promissory note in the amount of \$27,000.00 payable in monthly installments, with interest thereon at the rate of 8 percent per annum.

The Court further finds that on November 7, 1978, the Defendants, Bobby C. McGonigal and Patty S. McGonigal, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$1,000.00 payable in monthly installments, with interest thereon at the rate of 8.5 percent per annum.

The Court further finds that as security for the payment of the above-described notes, the Defendants, Bobby C. McGonigal and Patty S. McGonigal, executed and delivered to the United States of America, acting through the Farmers Home Administration, real estate mortgages dated August 8, 1978 and November 7, 1978, covering the above-described property. Said mortgages were recorded on August 9, 1978, in Book 711, Page 1004, and on January 3, 1979, in Book 718, Page 198, in the records of Washington County, Oklahoma.

The Court further finds that the Defendants, Bobby C. McGonigal and Patty S. McGonigal, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Bobby C. McGonigal and Patty S. McGonigal, are indebted to the Plaintiff in the principal sum of \$25,736.62, plus accrued interest in the amount of \$3,540.52 as of June 13, 1988, plus interest accruing thereafter at the rate of \$5.6530 per day until judgment, plus

interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that Defendants, Aetna Finance Company; County Treasurer, Washington County, Oklahoma; and Board of County Commissioners, Washington County, Oklahoma, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Bobby C. McGonigal and Patty S. McGonigal, in the principal sum of \$25,736.62, plus accrued interest in the amount of \$3,540.52 as of June 13, 1988, plus interest accruing thereafter at the rate of \$5.6530 per day until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Aetna Finance Company; County Treasurer, Washington County, Oklahoma; and Board of County Commissioners, Washington County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise

and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

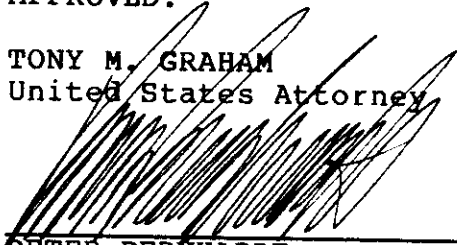
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. HILSON
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES,
TRUSTEES, SUCCESSORS AND
ASSIGNS OF MAX L. BOLEY,
Deceased; PACESETTER PRODUCTS,
INC. n/k/a THE PACESETTER
CORPORATION; FIRST FEDERAL
SAVINGS AND LOAN ASSOCIATION
OF RAPID CITY, now FIRST
FEDERAL SAVINGS BANK; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 87-C-1083-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of Dec, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Doris L. Fransein, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, First Federal
Savings and Loan Association of Rapid City, now First Federal
Savings Bank, appears by its attorney R. Forney Sandlin; and the
Defendants, The Unknown Heirs, Executors, Administrators,
Devisees, Trustees, Successors and Assigns of Max L. Boley,

Deceased, and Pacesetter Products, Inc. n/k/a The Pacesetter Corporation, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Pacesetter Products, Inc. n/k/a The Pacesetter Corporation, was served with Summons and Complaint on April 5, 1988; that the Defendant, First Federal Savings and Loan Association of Rapid City, now First Federal Savings Bank, acknowledged receipt of Summons and First Amended Complaint on February 5, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 31, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 31, 1987.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Max L. Boley, Deceased, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 6, 1988, and continuing to October 11, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c) and 84 O.S. § 260. Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Max L. Boley, Deceased, and service

cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Max L. Boley, Deceased. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on January 20, 1988, and their Answers to Second Amended Complaint herein on July 25,

1988; that the Defendant, First Federal Savings and Loan Association of Rapid City, now First Federal Savings Bank, filed its Answer herein on February 16, 1988; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Max L. Boley, Deceased, and Pacesetter Products, Inc. n/k/a The Pacesetter Corporation, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-five (25), Block Nine (9), SUBURBAN HILLS ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of Max L. Boley and of judicially determining the heirs of Max L. Boley.

The Court further finds that Max L. Boley became the record owner of the real property involved in this action by virtue of that certain Warranty Deed dated December 5, 1967, from W. J. Driver, as Administrator of Veterans Affairs to Max L. Boley, a single person, which Warranty Deed was filed in the records of Tulsa County, Oklahoma, on December 7, 1967, in Book 3831, Page 617.

The Court further finds that Max L. Boley died on September 24, 1987, while seized and possessed of the real

property being foreclosed. The Certificate of Death No. 21628 was issued by the Oklahoma State Department of Health certifying Max L. Boley's death.

The Court further finds that on December 6, 1967, Max L. Boley, now deceased, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, his mortgage note in the amount of \$9,750.00, payable in monthly installments, with interest thereon at the rate of six percent (6%) per annum.

The Court further finds that as security for the payment of the above-described note, Max L. Boley, now deceased, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated December 6, 1967, covering the above-described property. Said mortgage was recorded on December 7, 1967, in Book 3831, Page 645, in the records of Tulsa County, Oklahoma.

The Court further finds that Max L. Boley, now deceased, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, and that by reason thereof Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of \$5,638.77, plus interest at the rate of 6 percent per annum from January 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Max L. Boley, and to a judicial determination of the heirs of Max L. Boley.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendant, First Federal Savings and Loan Association of Rapid City, now First Federal Savings Bank, has a lien on the property which is the subject matter of this action by virtue of an Installment Sales Contract and Mortgage, dated May 28, 1984, and recorded on June 27, 1984, in Book 4800 at Page 385 in the records of Tulsa County, Oklahoma. In addition, Defendant, First Federal Savings and Loan Association of Rapid City, now First Federal Savings Bank, may claim some right, title, or interest in the property being foreclosed by virtue of a Default Judgment against Max L. Boley for the sum of \$2,750.34, with interest thereon at 17.72 percent per annum from February 26, 1987, to the date of judgment, an attorney fee of \$412.55, statutory interest from the date of judgment, and costs. Said judgment was dated October 2, 1987, and recorded on October 7, 1987 in Book 5056 at Page 1694 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Max L. Boley, Deceased, and Pacesetter Products, Inc. n/k/a The Pacesetter Corporation, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$5,638.77, plus interest at the rate of 6 percent per annum from January 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the death of Max L. Boley be and the same is hereby judicially determined to have occurred on September 24, 1987, in the City of Muskogee, County of Muskogee, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that despite the exercise of due diligence by Plaintiff and its counsel no known heirs of Max L. Boley, Deceased, have been discovered and it is hereby judicially determined that Max L. Boley, Deceased, has no known heirs, executors, administrators, devisees, trustees, successors and assigns, and the Court approves the Certificate of Publication and Mailing filed by Plaintiff regarding said heirs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, First Federal Savings and Loan Association of Rapid City, now First Federal Savings Bank, have and recover judgment in the amount of \$2,750.34, with interest thereon at 17.72 percent per annum from February 26, 1987, to the date of

judgment, an attorney fee of \$412.55, statutory interest from the date of judgment, and costs, by virtue of an Installment Sales Contract and Mortgage, dated May 28, 1984, and recorded on June 27, 1984, in Book 4800 at Page 385 in the records of Tulsa County, Oklahoma, and by virtue of a Default Judgment, dated October 2, 1987, and recorded on October 7, 1987 in Book 5056 at Page 1694 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Max L. Boley, Deceased; Pacesetter Products, Inc. n/k/a The Pacesetter Corporation; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, First Federal Savings and Loan Association of Rapid City, now First Federal Savings Bank, in the amount of \$2,750.34, with interest thereon at 17.72 percent per annum from February 26, 1987, to the date of judgment, an attorney fee of \$412.55, statutory interest from the date of judgment, and costs.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

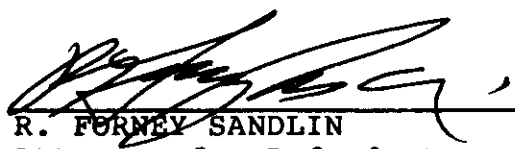
UNITED STATES DISTRICT JUDGE

APPROVED:

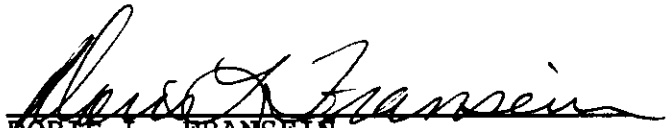
TONY M. GRAHAM
United States Attorney



PETER BERNHARDT
Assistant United States Attorney



R. FORNEY SANDLIN
Attorney for Defendant,
First Federal Savings and Loan
Association of Rapid City,
now First Federal Savings Bank



BORIS L. FRANSEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

PB/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HENRY RAY SANTIN,

Plaintiff,

vs.

BARON V. WHATELEY, D.D.S.,
MAX D. BIRD, D.D.S.
individuals, and ST. PAUL
FIRE & MARINE INSURANCE Co.,
a foreign insurance company,

Defendants.

No. 88-C-1042-B

FILED

DEC 16 1988

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for decision the Defendants Baron V. Whateley and St. Paul Fire & Marine Insurance Company's Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim Plaintiff's action for "... conspiracy to unlawfully injure, cheat, and defraud Santin of his property rights of redress..."¹

HISTORY OF CASE

Plaintiff, Henry Ray Santin ("Santin"), filed an alleged dental malpractice petition in the Oklahoma state court on January 16, 1980 against the Defendants Baron V. Whateley, D.D.S. ("Whateley") and Max D. Bird, D.D.S. ("Bird"). Plaintiff alleged therein that on September 2, 1977 the Defendant Whateley negligently left a drill bit in the jaw of the Plaintiff resulting

¹The Court by Order of December 12, 1988 sustained the remand to the state court of Plaintiff's original dental malpractice action against Defendants Whateley and Bird. Therein the Court concluded this alleged conspiracy action was separate and independent and retained diversity jurisdiction pursuant to 28 U.S.C. 1441(c).

in painful and permanent injuries. The Plaintiff further claimed that both Defendants Whateley and Bird became aware of the presence of the drill bit in Plaintiff's jaw and intentionally concealed this fact from Plaintiff. Plaintiff states he did not discover the alleged dental malpractice until February 6, 1979.

At the time the dental malpractice lawsuit was filed Defendant Whateley had left Tulsa, Oklahoma and returned to Detroit, Michigan to pursue an advanced degree in orthodontics at the University of Detroit. Santin was unable to obtain personal service of summons upon Whateley after numerous attempts and the trial court quashed the effort to serve Whateley by publication on April 1, 1981. The Plaintiff eventually obtained personal service of summons upon Whateley on April 15, 1982.

On January 3, 1986, the trial court sustained Dr. Whateley's motion for summary judgment on statute of limitations grounds. The Plaintiff appealed this decision and on February 16, 1988, the Oklahoma Court of Appeals reversed the trial court's decision, remanding the case for further proceedings. The appellate court concluded that service upon Whateley by publication had been timely obtained, and concluded that Defendant Whateley had intentionally concealed himself from service. Whateley's petition for certiorari was denied by the Oklahoma Supreme Court on July 6, 1988.

On July 27, 1988 the Plaintiff filed his Fourth Amendment to Petition in the state court adding St. Paul Fire & Marine Insurance Company as a defendant and asserting a new cause of action against the Defendant Whateley and St. Paul for "... conspiracy to

unlawfully injure, cheat, and defraud Santin of his property rights of redress...." Therein Plaintiff alleged Defendants Whateley and St. Paul wrongfully conspired to not disclose to Plaintiff the presence of the drill bit negligently left in Plaintiff's jaw by Defendant Whateley, and Whateley and St. Paul also conspired to conceal Whateley to prevent service of summons upon him in the dental malpractice action.

On page six of the Fourth Amendment to Petition filed July 27, 1988 Santin alleges:

"6. As a direct and proximate result of said unlawful conspiracy and continuing acts of Whateley and St. Paul, Santin has suffered extreme physical pain and serious infections and the direct and consequential and permanent injury to his physical health and loss of several teeth, and humiliation and emotional distress, and medical and dental expenses and will suffer those expenses in the future, and the loss of opportunity profits, and damage to his personal rights and property rights of redress under the law for actual and consequential damages in the amount of \$750,000.00, and as much more as the jury should determine."

In Plaintiff's Amended Petition filed April 30, 1982 concerning his injury from the alleged dental malpractice, Plaintiff states:

"[A]nd within a few days after the rusty and encrusted drill bit was extracted from plaintiff's mouth on February 19, 1979, plaintiff was slowly able to resume the consumption of hot and cold food and drink with increasingly less pain and discomfort and his dizziness, nausea and headaches slowly disappeared but plaintiff continued to have colds, sinus infections and less frequent headaches and less severe headaches. By the early part of July, 1979, plaintiff had substantially regained his physical weight and strength and was no longer nervous and was not

suffering from pain and discomfort in his head nor from headaches, dizziness and nausea and could again sleep and had reestablished a wholesome relationship with his wife, children and fellow workers and appeared to be substantially recovered, except for the loss of three teeth."

On page 3 of Plaintiff's Reply on Motion to Remand filed October 4, 1988, Plaintiff states:

"The third claim [conspiracy claim] seeks the same damages as those sought for recovery under the non-diverse dental malpractice claims."

Thus Plaintiff concedes the damages sought in the alleged conspiracy claim are the same as in his alleged dental malpractice claim, now pending in the state court and filed in excess of eight years ago.

CONCLUSIONS CONCERNING MOTION TO DISMISS

Plaintiff's alleged conspiracy claim fails for three reasons:

1. It fails to comply with Fed.R.Civ.P. 9(b) that the circumstances of fraud be pled with particularity;
2. The alleged conspiracy claim reflects that the applicable two-year period of limitations (12 O.S. §95(3)) has expired; and
3. It fails to allege independent damages.

In Oklahoma, the controlling state law in this diversity action, a conspiracy consists of a combination of two or more persons who by some concerted action join to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful, by criminal or unlawful means. Fink v. Sheridan Bank of Lawton, Oklahoma, 259 F.Supp. 899, 902-903

(W.D.Okla. 1966). If the acts complained of and the means employed by the concerted actors are lawful, no actionable civil conspiracy exists. Jurkowski v. Crawley, 637 P.2d 56, 62 (Okla. 1981), and Fink v. Sheridan Bank of Lawton, supra.

Rule 9(b) of the Federal Rules of Civil Procedure states that factual circumstances must be pled with particularity to support allegations of fraud. In the Plaintiff's conspiracy claim herein there are conclusory allegations of what the parties conspired to do, i.e., not disclose the existence of the drill bit in the Plaintiff's jaw and conceal Plaintiff from service, but there are no specific allegations in the complaint of who, that is the individuals, and when and where such concerted action was entered into. Brown v. Chaffee, 612 F.2d 497 (10th Cir. 1979), and Seattle-First National Bank v. Carlstedt, 800 F.2d 1008 (10th Cir. 1986).

The Defendant Whateley would have a duty to disclose to Plaintiff the existence of the drill bit left in Plaintiff's jaw, and not intentionally withhold such information. However, the allegations of Plaintiff's Amendment to Petition filed July 27, 1988 reveal that Plaintiff learned of the presence of the drill bit in February 1979 and previous to that date was aware of Dr. Whateley and St. Paul's, the latter as his liability insurance carrier, involvement. The period of limitations of such a civil conspiracy is two years. 12 Okla.Stat. §95(3); Clulow v. State of Oklahoma, 700 F.2d 1291, 1303 (10th Cir. 1983), overruled on other grounds, Garcia v. Wilson, 731 F.2d 640, 651 (10th Cir. 1984),

aff'd, 471 U.S. 261 (1985); and Paxton v. Hyer, 186 Okla. 407, 87 P.2d 938 (1939). Therefore, Plaintiff's alleged conspiracy action is untimely by at least seven years. No allegations are made that would implement a tolling of the statute of limitations.

In Turnbow v. Powers, 620 P.2d 403, 406 (Okla. 1980), the court stated:

"We are aware of no provision of law which requires a person to make himself available to service of process."

In footnote 5, page 406, of Turnbow v. Powers, the court further stated:

"... we note that merely defeating or opposing process is not actionable...."

Therefore, if Whateley and St. Paul did in concert agree to oppose or defeat service of process such would not be actionable as a civil conspiracy.² Oklahoma law provides for the tolling of a period of limitation or service by publication where a defendant is concealing himself from civil service of summons. Spurgin v. Mixon, 246 F.2d 932 (10th Cir. 1957); and 12 Okla.Stat. §§170.6, 173, 174.

In the state dental malpractice action the Defendants Whateley and St. Paul, as the nonparty liability carrier of Whateley, urged the defense of statute of limitations, which they had the right to do. Plaintiff's contention that Defendants' persistence in such

²Any claim of denial of due process under the Fourteenth Amendment is without merit where, as here, the parties are acting privately and not on behalf of the state or under color of law. Downie v. Powers, 193 F.2d 760, 765 (10th Cir. 1951).

defense in the Court of Appeals and by certiorari to the Supreme Court of Oklahoma is a continuing actionable conspiracy, is without merit.³

Barsh v. Mullins, 338 P.2d 845, 847 (Okla. 1959) states:

"The gist of a civil action for conspiracy is damages and not the conspiracy."

The damages alleged by Plaintiff in the conspiracy claim previously set out on pages 3 and 4 of this order are the same damages alleged in the dental malpractice claim. Obviously, Plaintiff's alleged pain and suffering and temporary or permanent disability did not result from the alleged conspiracy but from the alleged dental malpractice.⁴ No injury proximately caused by the alleged conspiracy is alleged. As was stated in Allen v. Ramsey, 41 P.2d 658 (Okla. 1935):

"A simple conspiracy, however atrocious, unless it resulted in actual damage to the party, never was the subject of a civil action; not even when the old form of a writ of conspiracy, in its limited and most technical character, was in use." Nance v. Menefee, 242 P. 224, 226, 227 (Okla. 1925); citing Hutchins v. Hutchins, 7 Hill (New York) 104, 107.

³The issue was obviously a close one as Defendants prevailed in the trial court and lost in a two-to-one decision in the appellate court.

⁴Oklahoma's prejudgment interest statute in personal injury cases, 12 Okla.Stat. §727, accommodates for delays in collecting personal injury awards from negligent tortfeasors by awarding the specified rate of interest from the date the action was commenced until the date of verdict.

For the reasons stated above, the Defendants Whateley and St. Paul's Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) is hereby sustained and a separate Judgment in keeping with the Court's order is filed herewith.

IT IS SO ORDERED this 16th day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HENRY RAY SANTIN,

Plaintiff,

vs.

BARON V. WHATELEY, D.D.S.,
MAX D. BIRD, D.D.S.
individuals, and ST. PAUL
FIRE & MARINE INSURANCE Co.,
a foreign insurance company,

Defendants.


No. 88-C-1042-B

DEC 16 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

In keeping with the Court's order of this date sustaining the Defendants Baron V. Whateley and St. Paul Fire & Marine Insurance Company's motion to dismiss the Plaintiff's alleged conspiracy claim filed July 27, 1988, Judgment is hereby entered in favor of said Defendants and against the Plaintiff, Henry Ray Santin, and the action is hereby dismissed. Costs are hereby assessed against the Plaintiff in said action and the parties are to pay their own respective attorney's fees.

DATED this 16th day of December, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 16 1988

Jack C. Smith, Clerk
U.S. District Court

LILLIAN REESE,
Plaintiff,
vs.
MERCER FOOD, INC.,
Defendant.

No. 88-C-241-E

O R D E R

This matter comes on before the Court on Defendant's Motion for Summary Judgment. After reviewing the pleadings filed herein and hearing the arguments of counsel the Court finds as follows:

The Plaintiff's husband, Charles Reese, was viciously gunned down and murdered in Defendant's grocery store on July 29, 1987 at approximately 12 noon. The facts are basically undisputed. The question before the Court is what duty, if any, did Mercer have to protect Mr. Reese from the acts of the assailant and further, if there was a duty was it breached and was this breach the proximate cause of the harm to Charles Reese.

Initially, a determination must be made of Mercer's duty to Mr. Reese. Mr. Reese was shopping at Defendant's store when he was assaulted. He was an invitee of Defendant Mercer. Hostick v. Hall, 386 P.2d 758, 762 (Okla. 1963). A shopkeeper's duty to a business invitee is for a shopkeeper to keep its store:

"in a reasonable safe condition and to warn its customers of dangerous conditions upon the premises which were known to the storekeeper. The Defendant (storekeeper), of course, was not an insurer of the safety of its customers. Generally, a storekeeper is not liable for injuries to its customers caused by acts of third parties committed independently of the

storekeeper and which the storekeeper could not reasonably have anticipated and guarded against. However, a storekeeper is liable for injuries inflicted on its customers by third parties if they were produced by dangerous conditions of which the storekeeper had actual or constructive notice." (citations omitted). Fleming v. Allied Supermarkets, Inc., 236 F.Supp. 306, 309 (W.D. Okla. 1964).

A look at Oklahoma law regarding third party liability is helpful. The Oklahoma Supreme Court has recently modified its position regarding liability for criminal acts done by third parties in Landlord-Tenant situations. In Lay v. Dworman, 732 P.2d 455 (Okla. 1986), Rhonda Lay was assaulted and raped in her apartment. Her apartment was owned by appellees. Prior to the rape, appellees knew of criminal activities in the neighborhood, including other rapes. Most importantly, Ms. Lay had complained of a defective lock on the sliding glass door. The Court stated that appellant had stated a cause of action in negligence and clarified a Landlord's duties as follows:

"Applying this principle to the landlord-tenant situation we can define the duty owed by the landlord as being a duty to use reasonable care to maintain the common areas of the premises in such a manner as to insure that the likelihood of criminal activity is not unreasonably enhanced by the condition of those common premises." Id. at 458.

In the Lay case the Court concluded, under those specific facts:

"Based upon the foregoing analysis, appellant's amended petition does state an extant duty on the part of appellees flowing from their averred knowledge of criminal activities in the complex and the knowledge of the defective lock in appellant's apartment. The petition further avers a breach of that duty by alleging that appellees had been informed by appellant of the defective lock

and had failed to make necessary repairs. Id. at 459.

Knowledge of the activity, it appears would have to be combined with some other act.

"We also reject the concept that a statement regarding the security of a complex, in and of itself, establishes a landlord's liability for criminal activities within the complex in the absence of facts establishing a causal connection between the alleged breach of warranty and the injury." Id. at 460.

The Court did not, however, relieve the appellant of her duty to prove proximate cause. Id. at 460.

How does the Lay rationale apply to the instant case? The Lay court was clear that:

"This duty arises from the landlord-tenant contract and from the implication that the landlord is to provide services under the contract in a diligent manner. That the landlord must furnish these services is in turn necessarily implied under Oklahoma law in order to insure the reasonability of the contractual agreement." Id. at 458.

There is no contractual obligation between a shopkeeper and a business invitee.

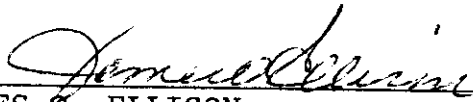
As a business invitee, even in light of Lay, Defendant Mercer only owed Mr. Reese a duty to protect him from third party criminal acts which Mercer could have reasonably anticipated or had notice of and guarded against. No one could reasonably have anticipated¹

¹There is a disagreement between the parties as to whether Mr. Dale pointed a gun at employee Albert Liles prior to or after the shooting. Assuming, arguendo, that it was prior to the shooting, this Court can find no duty on the part of Mr. Liles to somehow stop Mr. Dale or put his life in danger by running into the store to warn others.

that Larry Dale would have burst into Mercer and shot Mr. Reese. Thus, Mercer breached no duty to Mr. Reese. The Court sympathizes with Mrs. Reese but cannot transfer the liability from "one innocent victim to another innocent victim." Davis v. Allied Supermarket, 547 P.2d 963, 965 (Okla. 1976). Defendant's Motion for Summary Judgment should be granted.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is granted. Defendant is directed to draft a proposed form of judgment within ten (10) days.

ORDERED this 14th day of December, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

K

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TURBINE EAGLE CHARTERS, INC.,)
)
 Plaintiff,)
)
vs.)
)
MID-STATES AIRCRAFT ENGINES, INC.,)
)
 Defendant.)

Case No. 88-C-2

FILED


DEC 16 1988

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 15th day of December, the above captioned case is
hereby DISMISSED, with prejudice, each party to pay its own
costs.

IT IS SO ORDERED.



Judge

APPROVED:

Roger V. Eaton
1776 Montano Road, N.W.
Albuquerque, NM 87107
(505) 344-1776

Dale J. Briggs
BRIGGS, PATTERSON & EATON
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BY  _____

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Edward A. McConwell
THE LAW FIRM OF
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(913) 262-0605

BY

A handwritten signature in cursive script, appearing to read "Edward A. McConwell", written over a horizontal line.

ATTORNEYS FOR DEFENDANT

F I L E D

DEC 1 1964

Jack C. Silver, Jr.
U.S. DISTRICT COURT


Case #: C-88-636 B

SIMON UNRUH d/b/a THE
LEAF CLUB, and JAMES
ODIORNE, Receiver of
Texas Fire Insurance
Company, and HARRY
EAKIN, Receiver of
Allied Fidelity
Insurance Company,

Defendants.

COMES NOW the Plaintiff, EBONIE ADA REED, and hereby dismisses her causes of action against Defendants James Odiorne, Receiver of Texas Fire Insurance Company and Harry Eakin, Receiver of Allied Fidelity Insurance Company, WITH prejudice, and also dismisses her causes of action against the Defendant Simon Unruh, d/b/a The Leaf Club without prejudice.

RESPECTFULLY SUBMITTED

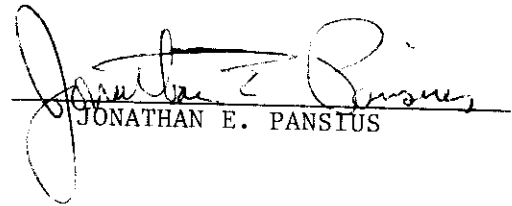

JONATHAN E. PANSIUS
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WILLIAM J. ANTON
OBA #: 10192

717 South Houston
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Tulsa, Oklahoma 74127
(918) 583-2586
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I, JONATHAN E. PANSIUS, would hereby certify that on the 16th day of December, 1988, I mailed a true and correct copy of the above and foregoing Notice of Dismissal to: Messrs. Tom E. Mullen and Michael McMillan of Fenton, Fenton, Smith Reneau & Moon, One Leadership Square, Suite 800, 211 North Robinson, Oklahoma City, Oklahoma 73102 and Mr. Joel R. Hogue of Gable & Gotwals, 2000 Fourth National Bank Building, 15 West Sixth Street, Tulsa, Oklahoma 74119-1217, with sufficient postage thereon fully prepaid.


JONATHAN E. PANSIUS